

NEW JERSEY STATUTES ANNOTATED
TITLE 58. WATERS AND WATER SUPPLY
CHAPTER 10A. WATER POLLUTION CONTROL
Current through L.1998 c. 153

58:10A-1. Short title

This act shall be known and may be cited as the "Water Pollution Control Act."

58:10A-2. Legislative findings and declarations

The Legislature finds and declares that pollution of the ground and surface waters of this State continues to endanger public health; to threaten fish and aquatic life, scenic and ecological values; and to limit the domestic, municipal, recreational, industrial, agricultural and other uses of water, even though a significant pollution abatement effort has been made in recent years. It is the policy of this State to restore, enhance and maintain the chemical, physical, and biological integrity of its waters, to protect public health, to safeguard fish and aquatic life and scenic and ecological values, and to enhance the domestic, municipal, recreational, industrial and other uses of water.

The Legislature further finds and declares that the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500; 33 U.S.C. 1251 et seq.) establishes a permit system to regulate discharges of pollutants and provides that permits for this purpose will be issued by the Federal Government or by states with adequate authority and programs to implement the regulatory provisions of that act. It is in the interest of the people of this State to minimize direct regulation by the Federal Government of wastewater dischargers by enacting legislation which will continue and extend the powers and responsibilities of the Department of Environmental Protection for administering the State's water pollution control program, so that the State may be enabled to implement the permit system required by the Federal Act.

58:10A-3. Definitions

As used in this act, unless the context clearly requires a different meaning, the following words and terms shall have the following meanings:

- a. "Administrator" means the Administrator of the United States Environmental Protection Agency or his authorized representative;
- b. "Areawide plan" means any plan prepared pursuant to section 208 of the Federal Act;
- c. "Commissioner" means the Commissioner of Environmental Protection or

his authorized representative;

d. "Department" means the Department of Environmental Protection;

e. "Discharge" means an intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of a pollutant into the waters of the State, onto land or into wells from which it might flow or drain into said waters or into waters or onto lands outside the jurisdiction of the State, which pollutant enters the waters of the State. "Discharge" includes the release of any pollutant into a municipal treatment works;

f. "Effluent limitation" means any restriction on quantities, quality, rates and concentration of chemical, physical, thermal, biological, and other constituents of pollutants established by permit, or imposed as an interim enforcement limit pursuant to an administrative order, including an administrative consent order;

g. "Federal Act" means the "Federal Water Pollution Control Act Amendments of 1972" (Public Law 92-500; 33 U.S.C. s 1251 et seq.);

h. "Municipal treatment works" means the treatment works of any municipal, county, or State agency or any agency or subdivision created by one or more municipal, county or State governments and the treatment works of any public utility as defined in R.S.48:2-13;

i. "National Pollutant Discharge Elimination System" or "NPDES" means the national system for the issuance of permits under the Federal Act;

j. "New Jersey Pollutant Discharge Elimination System" or "NJPDES" means the New Jersey system for the issuance of permits under this act;

k. "Permit" means a NJPDES permit issued pursuant to section 6 of this act. "Permit" includes a letter of agreement entered into between a delegated local agency and a user of its municipal treatment works, setting effluent limitations and other conditions on the user of the agency's municipal treatment works;

l. "Person" means any individual, corporation, company, partnership, firm, association, owner or operator of a treatment works, political subdivision of this State and any state or interstate agency. "Person" shall also mean any responsible corporate official for the purpose of enforcement action under section 10 of this act;

m. "Point source" means any discernible, confined and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged;

n. "Pollutant" means any dredged spoil, solid waste, incinerator residue,

sewage, garbage, refuse, oil, grease, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, thermal waste, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal or agricultural waste or other residue discharged into the waters of the State.

"Pollutant" includes both hazardous and nonhazardous pollutants;

o. "Pretreatment standards" means any restriction on quantities, quality, rates, or concentrations of pollutants discharged into municipal or privately owned treatment works adopted pursuant to P.L.1972, c. 42 (C.58:11-49 et seq.);

p. "Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with water quality standards, an effluent limitation or other limitation, prohibition or standard;

q. "Substantial modification of a permit" means any significant change in any effluent limitation, schedule of compliance, compliance monitoring requirement, or any other provision in any permit which permits, allows, or requires more or less stringent or more or less timely compliance by the permittee;

r. "Toxic pollutant" means any pollutant identified pursuant to the Federal Act, or any pollutant or combination of pollutants, including disease causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly or indirectly by ingestion through food chains, will, on the basis of information available to the commissioner, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformation, in such organisms or their offspring;

s. "Treatment works" means any device or systems, whether public or private, used in the storage, treatment, recycling, or reclamation of municipal or industrial waste of a liquid nature including intercepting sewers, outfall sewers, sewage collection systems, cooling towers and ponds, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any other works including sites for the treatment process or for ultimate disposal of residues resulting from such treatment. "Treatment works" includes any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of pollutants, including storm water runoff, or industrial waste in combined or separate storm water and sanitary sewer systems;

t. "Waters of the State" means the ocean and its estuaries, all springs, streams and bodies of surface or ground water, whether natural or artificial, within the boundaries of this State or subject to its jurisdiction;

u. "Hazardous pollutant" means:

- (1) Any toxic pollutant;
- (2) Any substance regulated as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, Pub.L.92-516 (7 U.S.C. s 136 et seq.);
- (3) Any substance the use or manufacture of which is prohibited under the federal Toxic Substances Control Act, Pub.L.94-469 (15 U.S.C. s 2601 et seq.);
- (4) Any substance identified as a known carcinogen by the International Agency for Research on Cancer;
- (5) Any hazardous waste as designated pursuant to section 3 of P.L.1981, c. 279 (C.13:1E-51) or the "Resource Conservation and Recovery Act," Pub.L.94-580 (42 U.S.C. s 6901 et seq.); or
- (6) Any hazardous substance as defined pursuant to section 3 of P.L.1976, c. 141 (C.58:10-23.11b);

v. "Serious violation" means an exceedance of an effluent limitation for a discharge point source set forth in a permit, administrative order, or administrative consent agreement, including interim enforcement limits, by 20 percent or more for a hazardous pollutant, or by 40 percent or more for a nonhazardous pollutant, calculated on the basis of the monthly average for a pollutant for which the effluent limitation is expressed as a monthly average, or, in the case of an effluent limitation expressed as a daily maximum and without a monthly average, on the basis of the monthly average of all maximum daily test results for that pollutant in any month; in the case of an effluent limitation for a pollutant that is not measured by mass or concentration, the department shall prescribe an equivalent exceedance factor therefor. The department may utilize, on a case-by-case basis, a more stringent factor of exceedance to determine a serious violation if the department states the specific reasons therefor, which may include the potential for harm to human health or the environment. "Serious violation" shall not include a violation of a permit limitation for color;

w. "Significant noncomplier" means any person who commits a serious violation for the same hazardous pollutant or the same nonhazardous pollutant, at the same discharge point source, in any two months of any six month period, or who exceeds the monthly average or, in a case of a pollutant for which no monthly average has been established, the monthly average of the daily maximums for an effluent limitation for the same pollutant at the same discharge point source by any amount in any four months of any six month period, or who fails to submit a completed discharge monitoring report in any two months of any six month period. The department may utilize, on a case-by-case basis, a more stringent frequency or factor of exceedance to determine a significant noncomplier, if the department states the specific reasons therefor, which may include the potential for harm to human health or the environment. A local agency shall not be deemed a "significant noncomplier" due to an exceedance of an effluent limitation established in a permit for flow;

x. "Local agency" means a political subdivision of the State, or an agency or instrumentality thereof, that owns or operates a municipal treatment works;

y. "Delegated local agency" means a local agency with an industrial

pretreatment program approved by the department;

z. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with an effluent limitation because of an event beyond the reasonable control of the permittee, including fire, riot, sabotage, or a flood, storm event, natural cause, or other act of God, or other similar circumstance, which is the cause of the violation. "Upset" also includes noncompliance consequent to the performance of maintenance operations for which a prior exception has been granted by the department or a delegated local agency;

aa. "Bypass" means the anticipated or unanticipated intentional diversion of waste streams from any portion of a treatment works;

bb. "Major facility" means any facility or activity classified as such by the Administrator of the United States Environmental Protection Agency, or his representative, in conjunction with the department, and includes industrial facilities and municipal treatment works;

cc. "Significant indirect user" means a discharger of industrial or other pollutants into a municipal treatment works, as defined by the department, including, but not limited to, industrial dischargers, but excluding the collection system of a municipal treatment works;

dd. "Violation of this act" means a violation of any provisions of this act, and shall include a violation of any rule or regulation, water quality standard, effluent limitation or other condition of a permit, or order adopted, issued, or entered into pursuant to this act;

ee. "Aquaculture" means the propagation, rearing, and subsequent harvesting of aquatic organisms in controlled or selected environments, and the subsequent processing, packaging and marketing, and shall include, but need not be limited to, activities to intervene in the rearing process to increase production such as stocking, feeding, transplanting, and providing for protection from predators. "Aquaculture" shall not include the construction of facilities and appurtenant structures that might otherwise be regulated pursuant to any State or federal law or regulation;

ff. "Aquatic organism" means and includes, but need not be limited to, finfish, mollusks, crustaceans, and aquatic plants which are the property of a person engaged in aquaculture.

58:10A-4. Codes, rules and regulations

The commissioner shall have power to prepare, adopt, amend, repeal and enforce, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.), reasonable codes, rules and regulations to prevent, control or abate water pollution and to carry out the intent of this act, either throughout the

State or in certain areas of the State affected by a particular water pollution problem. Such codes, rules and regulations may include, but shall not be limited to, provisions concerning:

- a. The storage of any liquid or solid pollutant in a manner designed to keep it from entering the waters of the State;
- b. The prior submission and approval of plans and specifications for the construction or modification of any treatment work or part thereof;
- c. The classification of the surface and ground waters of the State and the determination of water quality standards for each such classification;
- d. The limitation of effluents, including toxic effluents as indicated herein;
- e. The determination of pretreatment standards;
- f. The establishment of user charges and cost recovery requirements in conformance with the Federal Act;
- g. The establishment of a civil penalty policy governing the uniform assessment of civil penalties in accordance with section 10 of P.L.1977, c. 74 (C. 58:10A-10).

58:10A-5. Powers of department

The department is empowered to:

- a. Exercise general supervision of the administration and enforcement of this act and all rules, regulations and orders promulgated hereunder;
- b. Assess compliance of a discharger with applicable requirements of State and Federal law pertaining to the control of pollutant discharges and the protection of the environment and, also, to issue certification with respect thereto as required by section 401 of the Federal Act;
- c. Assess compliance of a person with applicable requirements of State and Federal law pertaining to the control of the discharge of dredged and fill material into the waters of the State and the protection of the environment and, also, to issue, deny, modify, suspend, or revoke permits with respect thereto as required by section 404 of the "Federal Water Pollution Control Act Amendments of 1972," as amended by the "Clean Water Act of 1977," (33 U.S.C. s 1344), and implementing regulations;
- d. Advise, consult, and cooperate with other agencies of the State, the federal government, other states and interstate agencies, including the State Soil Conservation Committee, and with affected groups, political subdivisions

and industries in furtherance of the purposes of this act;

e. Administer State and federal grants to municipalities, counties and other political subdivisions, or any recipient approved by the commissioner according to terms and conditions approved by him in order to meet the goals and objectives of this act.

58:10A-6. Regulation of discharges of pollutants; permits; exceptions; right of entry; regulation by local agency; inspections; priority pollutant analysis; public access to records

a. It shall be unlawful for any person to discharge any pollutant, except as provided pursuant to subsections d. and p. of this section, or when the discharge conforms with a valid New Jersey Pollutant Discharge Elimination System permit that has been issued by the commissioner pursuant to P.L.1977, c. 74 (C.58:10A-1 et seq.) or a valid National Pollutant Discharge Elimination System permit issued by the administrator pursuant to the Federal Act, as the case may be.

b. It shall be unlawful for any person to build, install, modify or operate any facility for the collection, treatment or discharge of any pollutant, except after approval by the department pursuant to regulations adopted by the commissioner.

c. The commissioner is hereby authorized to grant, deny, modify, suspend, revoke, and reissue NJPDES permits in accordance with P.L.1977, c. 74, and with regulations to be adopted by him. The commissioner may reissue, with or without modifications, an NPDES permit duly issued by the federal government as the NJPDES permit required by P.L.1977, c. 74 .

d. The commissioner may, by regulation, exempt the following categories of discharge, in whole or in part, from the requirement of obtaining a permit under P.L.1977, c. 74; provided, however, that an exemption afforded under this section shall not limit the civil or criminal liability of any discharger nor exempt any discharger from approval or permit requirements under any other provision of State or federal law:

(1) Additions of sewage, industrial wastes or other materials into a publicly owned sewage treatment works which is regulated by pretreatment standards;

(2) Discharges of any pollutant from a marine vessel or other discharges incidental to the normal operation of marine vessels;

(3) Discharges from septic tanks, or other individual waste disposal systems, sanitary landfills, and other means of land disposal of wastes;

(4) Discharges of dredged or fill materials into waters for which the State

could not be authorized to administer the section 404 program under section 404(g) of the "Federal Water Pollution Control Act Amendments of 1972," as amended by the "Clean Water Act of 1977" (33 U.S.C. s 1344) and implementing regulations;

(5) Nonpoint source discharges;

(6) Uncontrolled nonpoint source discharges composed entirely of storm water runoff when these discharges are uncontaminated by any industrial or commercial activity unless these particular storm water runoff discharges have been identified by the administrator or the department as a significant contributor of pollution;

(7) Discharges conforming to a national contingency plan for removal of oil and hazardous substances, published pursuant to section 311(c)(2) of the Federal Act;

(8) Discharges resulting from agriculture, including aquaculture, activities.

e. The commissioner shall not issue any permit for:

(1) The discharge of any radiological, chemical or biological warfare agent or high-level radioactive waste into the waters of this State;

(2) Any discharge which the United States Secretary of the Army, acting through the Chief of Engineers, finds would substantially impair anchorage or navigation;

(3) Any discharge to which the administrator has objected in writing pursuant to the Federal Act;

(4) Any discharge which conflicts with an areawide plan adopted pursuant to law.

f. A permit issued by the department or a delegated local agency pursuant to P.L.1977, c. 74 shall require the permittee:

(1) To achieve effluent limitations based upon guidelines or standards established pursuant to the Federal Act or to P.L.1977, c. 74, together with such further discharge restrictions and safeguards against unauthorized discharge as may be necessary to meet water quality standards, areawide plans adopted pursuant to law, or other legally applicable requirements;

(2) Where appropriate, to meet schedules for compliance with the terms of the permit and interim deadlines for progress or reports of progress towards compliance;

(3) To insure that all discharges are consistent at all times with the terms

and conditions of the permit and that no pollutant will be discharged more frequently than authorized or at a level in excess of that which is authorized by the permit;

(4) To submit application for a new permit in the event of any contemplated facility expansion or process modification that would result in new or increased discharges or, if these would not violate effluent limitations or other restrictions specified in the permit, to notify the commissioner, or delegated local agency, of such new or increased discharges;

(5) To install, use and maintain such monitoring equipment and methods, to sample in accordance with such methods, to maintain and retain such records of information from monitoring activities, and to submit to the commissioner, or to the delegated local agency, reports of monitoring results for surface waters, as may be stipulated in the permit, or required by the commissioner or delegated local agency pursuant to paragraph (9) of this subsection, or as the commissioner or the delegated local agency may prescribe for ground water. Significant indirect users, major industrial dischargers, and local agencies, other than those discharging only stormwater or noncontact cooling water, shall, however, report their monitoring results for discharges to surface waters monthly to the commissioner, or the delegated local agency. Discharge monitoring reports for discharges to surface waters shall be signed by the highest ranking official having day-to-day managerial and operational responsibilities for the discharging facility, who may, in his absence, authorize another responsible high ranking official to sign a monthly monitoring report if a report is required to be filed during that period of time. The highest ranking official shall, however, be liable in all instances for the accuracy of all the information provided in the monitoring report; provided, however, that the highest ranking official may file, within seven days of his return, amendments to the monitoring report to which he was not a signatory. The highest ranking official having day-to-day managerial and operational responsibilities for the discharging facility of a local agency shall be the highest ranking licensed operator of the municipal treatment works in those instances where a licensed operator is required by law to operate the facility. In those instances where a local agency has contracted with another entity to operate a municipal treatment works, the highest ranking official who signs the discharge monitoring report shall be an employee of the contract operator and not of the local agency. Notwithstanding that an employee of a contract operator is the official who signs the discharge monitoring report, the local agency, as the permittee, shall remain liable for compliance with all permit conditions. In those instances where the highest ranking official having day-to-day managerial and operational responsibilities for a discharging facility of a local agency does not have the responsibility to authorize capital expenditures and hire personnel, a person having that responsibility, or a person designated by that person, shall submit to the department, along with the discharge monitoring report, a certification that that person has received and reviewed the discharge monitoring report. The person submitting the certification to the department shall not be liable for the accuracy of the information on the discharge monitoring report due to the submittal of the

certification. Whenever a local agency has contracted with another entity to operate the municipal treatment works, the person submitting the certification shall be an employee of the permittee and not of the contract operator. The filing of amendments to a monitoring report in accordance with this paragraph shall not be considered a late filing of a report for purposes of subsection d. of section 6 of P.L.1990, c. 28 (C.58:10A-10.1), or for purposes of determining a significant noncomplier;

(6) At all times, to maintain in good working order and operate as effectively as possible, any facilities or systems of control installed to achieve compliance with the terms and conditions of the permit;

(7) To limit concentrations of heavy metal, pesticides, organic chemicals and other contaminants in the sludge in conformance with the land-based sludge management criteria established by the department in the Statewide Sludge Management Plan adopted pursuant to the "Solid Waste Management Act," P.L.1970, c. 39 (C.13:1E-1 et seq.) or established pursuant to the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. s 1251 et seq.), or any regulations adopted pursuant thereto;

(8) To report to the department or delegated local agency, as appropriate, any exceedance of an effluent limitation that causes injury to persons, or damage to the environment, or poses a threat to human health or the environment, within two hours of its occurrence, or of the permittee becoming aware of the occurrence. Within 24 hours thereof, or of an exceedance, or of becoming aware of an exceedance, of an effluent limitation for a toxic pollutant, a permittee shall provide the department or delegated local agency with such additional information on the discharge as may be required by the department or delegated local agency, including an estimate of the danger posed by the discharge to the environment, whether the discharge is continuing, and the measures taken, or being taken, to remediate the problem and any damage to the environment, and to avoid a repetition of the problem;

(9) Notwithstanding the reporting requirements stipulated in a permit for discharges to surface waters, a permittee shall be required to file monthly reports with the commissioner or delegated local agency if the permittee:

(a) in any month commits a serious violation or fails to submit a completed discharge monitoring report and does not contest, or unsuccessfully contests, the assessment of a civil administrative penalty therefor; or

(b) exceeds an effluent limitation for the same pollutant at the same discharge point source by any amount for four out of six consecutive months.

The commissioner or delegated local agency may restore the reporting requirements stipulated in the permit if the permittee has not committed any of the violations identified in this paragraph for six consecutive months;

(10) To report to the department or delegated local agency, as appropriate, any serious violation within 30 days of the violation, together with a statement indicating that the permittee understands the civil administrative penalties required to be assessed for serious violations, and explaining the nature of the serious violation and the measures taken to remedy the cause or prevent a recurrence of the serious violation.

g. The commissioner and a local agency shall have a right of entry to all premises in which a discharge source is or might be located or in which monitoring equipment or records required by a permit are kept, for purposes of inspection, sampling, copying or photographing.

h. In addition, any permit issued for a discharge from a municipal treatment works shall require the permittee:

(1) To notify the commissioner or local agency in advance of the quality and quantity of all new introductions of pollutants into a facility and of any substantial change in the pollutants introduced into a facility by an existing user of the facility, except for such introductions of nonindustrial pollutants as the commissioner or local agency may exempt from this notification requirement when ample capacity remains in the facility to accommodate new inflows. The notification shall estimate the effects of the changes on the effluents to be discharged into the facility.

(2) To establish an effective regulatory program, alone or in conjunction with the operators of sewage collection systems, that will assure compliance and monitor progress toward compliance by industrial users of the facilities with user charge and cost recovery requirements of the Federal Act or State law and toxicity standards adopted pursuant to P.L.1977, c. 74 and pretreatment standards.

(3) As actual flows to the facility approach design flow or design loading limits, to submit to the commissioner or local agency for approval, a program which the permittee and the persons responsible for building and maintaining the contributory collection system shall pursue in order to prevent overload of the facilities.

i. (1) All local agencies shall prescribe terms and conditions, consistent with applicable State and federal law, or requirements adopted pursuant thereto by the department, upon which pollutants may be introduced into treatment works, and shall have the authority to exercise the same right of entry, inspection, sampling, and copying, and to impose the same remedies, fines and penalties, and to recover costs and compensatory damages as authorized pursuant to subsection a. of section 10 of P.L.1977, c. 74 (C.58:10A-10) and section 6 of P.L.1990, c. 28 (C.58:10A-10.1), with respect to users of such works, as are vested in the commissioner by P.L.1977, c. 74, or by any other provision of State law, except that a local agency, except as provided in P.L.1991, c. 8 (C.58:10A-10.4 et seq.), may not impose civil administrative penalties, and shall

petition the county prosecutor or the Attorney General for a criminal prosecution under that section. Terms and conditions shall include limits for heavy metals, pesticides, organic chemicals and other contaminants in industrial wastewater discharges based upon the attainment of land-based sludge management criteria established by the department in the Statewide Sludge Management Plan adopted pursuant to the "Solid Waste Management Act," P.L.1970, c. 39 (C.13:1E-1 et seq.) or established pursuant to the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. s 1251 et seq.), or any regulations adopted pursuant thereto.

(2) Of the amount of any penalty assessed and collected pursuant to an action brought by a local agency in accordance with section 10 of P.L.1977, c. 74 or section 6 of P.L.1990, c. 28 (C.58:10A-10.1), 10% shall be deposited in the "Wastewater Treatment Operators' Training Account," established in accordance with section 13 of P.L.1990, c. 28 (C.58:10A-14.5), and used to finance the cost of training operators of municipal treatment works. The remainder shall be used by the local agency solely for enforcement purposes, and for upgrading municipal treatment works.

j. In reviewing permits submitted in compliance with P.L.1977, c. 74 and in determining conditions under which such permits may be approved, the commissioner shall encourage the development of comprehensive regional sewerage planning or facilities, which serve the needs of the regional community, conform to the adopted area-wide water quality management plan for that region, and protect the needs of the regional community for water quality, aquifer storage, aquifer recharge, and dry weather based stream flows.

k. No permit may be issued, renewed, or modified by the department or a delegated local agency so as to relax any water quality standard or effluent limitation until the applicant, or permit holder, as the case may be, has paid all fees, penalties or fines due and owing pursuant to P.L.1977, c. 74, or has entered into an agreement with the department establishing a payment schedule therefor; except that if a penalty or fine is contested, the applicant or permit holder shall satisfy the provisions of this section by posting financial security as required pursuant to paragraph (5) of subsection d. of section 10 of P.L.1977, c. 74 (C.58:10A-10). The provisions of this subsection with respect to penalties or fines shall not apply to a local agency contesting a penalty or fine.

l. Each permitted facility or municipal treatment works, other than one discharging only stormwater or non-contact cooling water, shall be inspected by the department at least once a year; except that each permitted facility discharging into the municipal treatment works of a delegated local agency, other than a facility discharging only stormwater or non-contact cooling water, shall be inspected by the delegated local agency at least once a year. Except as hereinafter provided, an inspection required under this subsection shall be conducted within six months following a permittee's submission of an application for a permit, permit renewal, or, in the case of a new facility or municipal treatment works, issuance of a permit therefor, except that if for any reason, a

scheduled inspection cannot be made the inspection shall be rescheduled to be performed within 30 days of the originally scheduled inspection or, in the case of a temporary shutdown, of resumed operation. Exemption of stormwater facilities from the provisions of this subsection shall not apply to any permitted facility or municipal treatment works discharging or receiving stormwater runoff having come into contact with a hazardous discharge site on the federal National Priorities List adopted by the United States Environmental Protection Agency pursuant to the "Comprehensive Environmental Response, Compensation, and Liability Act," Pub.L.96-510 (42 U.S.C. s 9601 et seq.), or any other hazardous discharge site included by the department on the master list for hazardous discharge site cleanups adopted pursuant to section 2 of P.L.1982, c. 202 (C.58:10-23.16). Inspections shall include:

(1) A representative sampling of the effluent for each permitted facility or municipal treatment works, except that in the case of facilities or works that are not major facilities or significant indirect users, sampling pursuant to this paragraph shall be conducted at least once every three years;

(2) An analysis of all collected samples by a State owned and operated laboratory, or a certified laboratory other than one that has been or is being used by the permittee, or that is directly or indirectly owned, operated or managed by the permittee;

(3) An evaluation of the maintenance record of the permittee's treatment equipment;

(4) An evaluation of the permittee's sampling techniques;

(5) A random check of written summaries of test results, prepared by the certified laboratory providing the test results, for the immediately preceding 12-month period, signed by a responsible official of the certified laboratory, certifying the accuracy of the test results; and

(6) An inspection of the permittee's sample storage facilities and techniques if the sampling is normally performed by the permittee.

The department may inspect a facility required to be inspected by a delegated local agency pursuant to this subsection. Nothing in this subsection shall require the department to conduct more than one inspection per year.

m. The facility or municipal treatment works of a permittee identified as a significant noncomplier shall be subject to an inspection by the department, or the delegated local agency, as the case may be, which inspection shall be in addition to the requirements of subsection l. of this section. The inspection shall be conducted within 60 days of receipt of the discharge monitoring report that initially results in the permittee being identified as a significant noncomplier. The inspection shall include a random check of written summaries of test results, prepared by the certified laboratory providing the test results, for the immediately

preceding 12-month period, signed by a responsible official of the certified laboratory, certifying the accuracy of the test results. A copy of each summary shall be maintained by the permittee. The inspection shall be for the purpose of determining compliance. The department or delegated local agency is required to conduct only one inspection per year pursuant to this subsection, and is not required to make an inspection hereunder if an inspection has been made pursuant to subsection l. of this section within six months of the period within which an inspection is required to be conducted under this subsection.

n. To assist the commissioner in assessing a municipal treatment works' NJPDES permit in accordance with paragraph (3) of subsection b. of section 7 of P.L.1977, c. 74 (C.58:10A-7), a delegated local agency shall perform a complete analysis that includes a complete priority pollutant analysis of the discharge from, and inflow to, the municipal treatment works. The analysis shall be performed by a delegated local agency as often as the priority pollutant scan is required under the permit, but not less than once a year, and shall be based upon data acquired in the priority pollutant scan and from applicable sludge quality analysis reports. The results of the analysis shall be included in a report to be attached to the annual report required to be submitted to the commissioner by the delegated local agency.

o. Except as otherwise provided in section 3 of P.L.1963, c. 73 (C.47:1A-3), any records, reports or other information obtained by the commissioner or a local agency pursuant to this section or section 5 of P.L.1972, c. 42 (C.58:11-53), including any correspondence relating thereto, shall be available to the public; however, upon a showing satisfactory to the commissioner by any person that the making public of any record, report or information, or a part thereof, other than effluent data, would divulge methods or processes entitled to protection as trade secrets, the commissioner or local agency shall consider such record, report, or information, or part thereof, to be confidential, and access thereto shall be limited to authorized officers or employees of the department, the local agency, and the federal government.

p. The provisions of this section shall not apply to a discharge of petroleum to the surface waters of the State that occurs as a result of the process of recovering, containing, cleaning up or removing a discharge of petroleum in the surface waters of the State and that is undertaken in compliance with the instructions of a federal on-scene coordinator or of the commissioner or the commissioner's designee.

q. The commissioner shall, in consultation with the Department of Agriculture and the Aquaculture Advisory Council, provide for the issuance of general permits for the discharge of pollutants from concentrated aquatic animal production facilities and aquacultural projects. In establishing general permits the commissioner shall take into consideration the source and receiving water quality and the type of aquaculture activity being conducted. The general permits issued pursuant to this subsection shall give priority to meeting best management practices rather than attaining numeric pollutant discharge

parameter levels. If the commissioner determines that a permittee cannot perform the best management practices in order to obtain a general permit or that the performance of best management practices will not be protective of water quality as required by P.L.1977, c. 74, the commissioner may require the permittee to obtain an individual permit which may contain numeric pollutant parameter discharge limits.

58:10A-6.1. Schedule of compliance; proposed administrative consent order; public notice and hearings

a. Every schedule of compliance shall require the permittee to demonstrate to the commissioner the financial assurance, including the posting of a bond or other security approved by the commissioner, necessary to carry out the remedial measures required by the schedule of compliance; except that a local agency shall not be required to post financial security as a condition of a schedule of compliance.

b. The department or a delegated local agency shall afford an opportunity to the public to comment on a proposed administrative consent order prior to final adoption if the administrative consent order would establish interim enforcement limits that would relax effluent limitations established in a permit or a prior administrative order. The department or a delegated local agency shall provide public notice of the proposed administrative consent order, and announce the length of the comment period, which shall be not less than 30 days, commencing from the date of publication of the notice. A notice shall also include a summary statement describing the nature of the violation necessitating the administrative consent order and its terms or conditions; shall specify how additional information on the administrative consent order may be obtained; and shall identify to whom written comments are to be submitted. At least three days prior to publication of the notice, a written notice, containing the same information to be provided in the published notice, shall be mailed to the mayor or chief executive officer and governing body of the municipality and county in which the violation occurred, and to any other interested persons, including any other governmental agencies. The department or delegated local agency shall consider the written comments received during the comment period prior to final adoption of the administrative consent order. Not later than the date that final action is taken on the proposed order, the department or delegated agency shall notify each person or group having submitted written comments of the main provisions of the approved administrative consent order and respond to the comments received therefrom.

c. The commissioner or delegated local agency, on his or its own initiative or at the request of any person submitting written comments pursuant to subsection b. of this section, may hold a public hearing on a proposed administrative order or administrative consent order, prior to final adoption if the order would establish interim enforcement limits that would relax for more than 24 months effluent limitations established in a permit or a prior administrative order or

administrative consent order. Public notice for the public hearing to be held pursuant to this subsection shall be published not more than 30 and not less than 15 days prior to the holding of the hearing. The hearing shall be held in the municipality in which the violation, necessitating the order, occurred. The department may recover all reasonable costs directly incurred in scheduling and holding the public hearing from the person requesting or requiring the interim enforcement limits.

58:10A-6.2. Legislative findings and declaration

The Legislature finds and declares that to enhance and improve the quality of the environment and to protect and foster the public health of the citizens of New Jersey it is altogether fitting and proper to allow private entities who, pursuant to law, have applied for a permit for the purpose of building, installing, maintaining or operating any facility for the collection, treatment or discharge of any pollutant or for the purpose of implementing pollution prevention process modifications to commence with that building, installation, maintenance or operation or to implement those modifications while the Department of Environmental Protection is reviewing the permit application; and that authorizing such pre-approval actions would lead to the environmental benefits that would result from the timely building, installation, maintenance and operation of facilities and the prompt implementation of pollution prevention process modifications.

The Legislature therefore determines that it is within the public interest to allow private entities who have applied for permits to build, install, maintain or operate any facility for the collection, treatment or discharge of any pollutant or for permits to implement pollution prevention process modifications to undertake such building, installation, maintenance or operation or to implement such process modifications while the department is reviewing their permit application, but with the clear and full understanding that they assume all risks for their actions.

58:10A-6.3. Construction or operation of water pollution control devices allowed during pendency of permit application review process

Except where specifically prohibited under the "Federal Water Pollution Control Act Amendments of 1972" (33 U.S.C. s 1251 et seq.) or any other such federal requirement, any private entity who has submitted to the Department of Environmental Protection, pursuant to the "Water Pollution Control Act," P.L.1977, c. 74 (C. 58:10A-1 et seq.), an application for a permit to build, install, maintain or operate any facility for the collection, treatment or discharge of any pollutant or to implement pollution prevention process modifications may build, install, maintain and operate such facilities or implement such pollution prevention process modifications during the pendency of the permit application review process. A private entity intending to take action authorized pursuant to

this section during the pendency of the permit application review process shall notify the department of the intent to undertake the action seven days prior to the commencement of the action. The prior notification may be made by certified mail or in a manner acceptable to the department.

Nothing in this section shall be construed to limit the department's discretion in establishing building, installation, maintenance and operating standards for such facilities, or in otherwise reviewing the permit application, nor shall the costs incurred by the applicant for the building, installation, maintenance or operation of such facilities or the implementation of pollution prevention process modifications during the pendency of the permit application review process be used by an applicant as grounds for an appeal of the department's decision on the permit application. If the department determines that any facilities or pollution prevention process modifications built, installed, maintained or implemented during the pendency of the permit application review process are not consistent with applicable federal and State laws, rules, or regulations, the department and the applicant shall enter into an agreement containing a schedule setting forth a date certain on which the applicant shall modify, replace or cease the operation of the facilities or implementation of the pollution prevention process modifications. If the department and the applicant shall fail to enter into an agreement, the department may issue a schedule setting forth a date certain on which the applicant shall comply.

Failure of the applicant to comply with the schedule setting forth a date for compliance shall constitute a violation of P.L.1977, c. 74 (C. 58:10A-1 et seq.), and shall subject the applicant to penalties as prescribed in that act. A person who builds, installs, maintains, or operates any facility for the collection, treatment, or discharge of pollutants or who implements pollution prevention process modifications in a manner which the department determines is not consistent with applicable federal or State laws, rules, or regulations, shall not be subject to civil or criminal penalties for that inconsistent action as long as the person's actions did not result in (1) the discharge of a pollutant which was not authorized to be discharged by the person's permit or (2) an exceedance of any applicable discharge parameter in the permit.

Nothing in this section shall be construed to authorize a person to discharge a pollutant not otherwise authorized to be discharged by a permit held by that person or to discharge a pollutant at a level in excess of the discharge parameters contained in the permit.

The provisions of this section shall not be construed to authorize or permit any building, installation, maintenance, or operation which would result in any new source of discharge but shall only apply to facilities for existing permitted sources of discharges.

As used in this section:

(1) "private entity" means any private individual, corporation, company,

partnership, firm, association, owner or operator but shall not include, and the provisions of this section shall not apply to, any municipal, county, or State agency or authority or to any agency, authority or subdivision created by one or more municipal, county or State governments;

(2) "pollution prevention process modifications" means any physical or operational change to a process which reduces water pollution discharges to the environment.

58:10A-7. Permits; duration; extension; grant, denial, modification, suspension, or revocation; party to action; escrow

a. All permits issued under this act shall be for fixed terms not to exceed five years. Any permittee who wishes to continue discharging after the expiration date of his permit must file for a new permit at least 180 days prior to that date.

b. (1) The commissioner may modify, suspend, or revoke a permit in whole or in part during its term for cause, including but not limited to the following:

(a) Violation of any term or condition of the permit;

(b) Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts.

(2) If a toxic effluent limitation or prohibition, including any schedule of compliance specified in such effluent limitation or prohibition, is established under section 307(a) of the Federal Act for a toxic pollutant which is more stringent than any limitations upon such pollutant in an existing permit, the commissioner shall revise or modify the permit in accordance with the toxic effluent limitation or prohibition and so notify the permittee.

(3) The department shall include in a permit for a delegated local agency effluent limits for all pollutants listed under the United States Environmental Protection Agency's Categorical Pretreatment Standards, adopted pursuant to 33 U.S.C. s 1317, and such other pollutants for which effluent limits have been established for a permittee discharging into the municipal treatment works of the delegated local agency, except those categorical or other pollutants that the delegated local agency demonstrates to the department are not discharged above detectable levels by the municipal treatment works. The department, by permit, may authorize the use by a delegated local agency of surrogate parameters for categorical and other pollutants discharged from a municipal treatment works, except that if a surrogate parameter is exceeded, the department shall require effluent limits for each categorical or other pollutant for which the surrogate parameter was used, for such period of time as may be determined by the department.

c. Notice of every proposed suspension, revocation or renewal, or substantial modification of a permit and opportunity for public hearing thereupon, shall be afforded in the same manner as with respect to original permit applications as provided for in this act. In any event notice of all modifications to a discharge permit shall be published in the DEP Bulletin.

d. A determination to grant, deny, modify, suspend, or revoke a permit shall constitute a contested case under the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.). The permittee, or any other person considered a party to the action pursuant to subsection e. of this section, shall have the opportunity to contest the determination in an administrative hearing.

e. A person, other than the permittee, seeking to be considered a party to the action shall submit a request to be so considered to the commissioner within 30 days of the publication of the notice of the decision to grant, deny, modify, suspend, or revoke a permit. The administrative law judge upon referral, or the commissioner, if the commissioner decides to make the determination, shall find whether a person other than the permittee is a party to the action within 30 days of the submission of the request or the referral to the administrative law judge. A person shall be deemed a party to the action only if:

(1) the person's objections to the action to grant, deny, modify, suspend, or revoke a permit were raised by that person in the hearing held pursuant to section 9 of P.L.1977, c. 74 (C.58:10A-9), or, if no hearing was held, the objections were raised in a written submission;

(2) the person demonstrates the existence of a significant issue of law or fact;

(3) the person shows that the significant issue of law or fact is likely to affect the permit determination;

(4) the person can show an interest, including an environmental, aesthetic, or recreational interest, which is or may be affected by the permit decision and that the interest fairly can be traced to the challenged action and is likely to be redressed by a decision favorable to that person. An organization may contest a permit decision on behalf of one or more of its members if (a) the organization's member or members could otherwise be a party to the action in their own right; and (b) the interests the organization seeks to protect are germane to the organization's purpose; and

(5) the person submits the following information with the request to be considered a party to the action:

(a) a statement of each legal or factual question alleged to be at issue and its relevance to the permit decision, together with a designation of the specific factual areas to be adjudicated and the hearing time estimated to be necessary for adjudication;

(b) information supporting the request which shall be submitted pursuant to adopted rules;

(c) the name, mailing address, and telephone number of the person making the request;

(d) a clear and concise factual statement of the nature and scope of the interest of the requester;

(e) the names and addresses of all affected persons whom the requester represents;

(f) a statement by the requester that, upon motion of any party granted by the hearing officer, or upon order of the hearing officer sua sponte, the requester shall make available to appear and testify at the administrative hearing, if granted, the following: the requester; all affected persons represented by the requester; and all officers, directors, employees, consultants, and agents of the requester;

(g) specific references to the contested permit conditions, as well as suggested revised or alternative permit conditions, including permit denials, which, in the judgment of the requester, would be required to implement the purposes of P.L.1977, c. 74; and

(h) in the case of application of control or treatment technologies identified in the statement of basis or fact sheet, identification of the basis for the objection, and the alternative technologies or combination of technologies which the requester believes are necessary to meet the requirements of P.L.1977, c. 74.

Whenever a person's request to be considered to be a party to the action is granted, the commissioner or the administrative law judge, as appropriate, shall identify the permit conditions which have been contested by the requester and for which an administrative hearing will be granted. Permit conditions which are not so contested shall not be affected by, or considered at, the administrative hearing. All requests by persons seeking to be considered a party to the action for a particular permit shall be combined in a single administrative hearing.

f. A permittee may contest the determination to grant, deny, modify, suspend, or revoke a permit in an administrative hearing pursuant to subsection d. of this section only upon the placement, in escrow, of money in an amount equal to the permit fee.

58:10A-7.1. Prohibition of issuance and expiration of permits to discharge any solid, semi-solid, or liquid wastes into ocean waters after December 31, 1991; exemptions

After December 31, 1991, the department may not issue a permit to any private, commercial, or industrial applicant for the discharge of any solid, semi-solid, or liquid wastes into the ocean waters of the State, the provisions of any other law, or rule or regulation to the contrary notwithstanding. Any permit issued by the department for the discharge of any such waste prior to January 1, 1992 shall expire on January 1, 1992, the provisions of any such permit to the contrary notwithstanding. The provisions of P.L.1989, c. 119 shall not apply to permits applied for, or issued to, municipal treatment works, seafood processing facilities¹, public water supply desalinization plants, or aquaculture activities. As used in this act, "ocean waters" means those waters of the open seas lying seaward of the base line from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606; TIAS 5639).

As used in this section, "aquaculture" means the propagation, rearing, and subsequent harvesting of aquatic organisms in controlled or selected environments, and the subsequent processing, packaging and marketing, and shall include, but need not be limited to, activities such as stocking, intervention in the rearing process to increase production, feeding, transplanting, and providing for protection from predators and shall not include the construction of facilities and appurtenant structures that might otherwise be regulated pursuant to any State or federal law or regulation, and "aquatic organism" means and includes, but need not be limited to, finfish, mollusks, crustaceans, and aquatic plants which are the property of a person engaged in aquaculture.

58:10A-7.2. Application for permit for groundwater to surface water remedial action; contents; request for consent forms; review; general permits; rules and regulations

a. An application for a permit issued by the Department of Environmental Protection pursuant to P.L.1977, c. 74 (C. 58:10A-1 et seq.) for the discharge of groundwater to surface water involving a groundwater remedial action necessitated by a discharge from an underground storage tank containing petroleum products or a groundwater remedial action involving petroleum products, shall contain, in addition to a properly filled application form:

(1) such documentation or other information on the permit application as may be prescribed by the department on a checklist made available to a prospective applicant;

(2) if the discharge from the proposed groundwater remedial action is located within a wastewater service district or area of a local public entity, a certified statement that a request, dated at least 60 days prior to the filing of the permit application, had been made to the local public entity to discharge the groundwater into the wastewater collection or treatment facilities of that entity, and that no reply has been received from that entity, or a written statement by the local public entity, dated not more than 60 days prior to the filing of the

permit application with the department, that the entity has approved or rejected a written request by the applicant to discharge the treated groundwater into the wastewater collection or treatment facilities of that entity. Notwithstanding that a local public entity has approved the request to discharge groundwater into its facilities, the department may approve the applicant's permit to discharge the groundwater to surface water upon a finding that it is in the public interest;

(3) a certified statement that a copy of the completed application form along with a consent request, as prescribed in subsection b. of this section, have been filed with the clerk of the municipality in which the site of the proposed groundwater remedial action is located, and setting forth the date of the filing with the host municipality, which filing shall be made prior to, or concurrent with, the filing of the application with the department; and

(4) within the pinelands area, documentation from the Pinelands Commission that the application is consistent with the requirements of the "Pinelands Protection Act," P.L.1979, c. 111 (C. 13:18A-1 et seq.) or any regulations promulgated pursuant thereto and section 502 of the "National Parks and Recreation Act of 1978" (Pub.L. 95-625).

b. The department shall prescribe the form and content of a request for consent filed with a municipality pursuant to paragraph (3) of subsection a. of this section. The municipal consent request shall be limited to an identification of all municipal approvals with which the applicant is required to comply, the status of any applications filed therefor, and whether or not the municipality consents to the application and the specific reasons therefor. The request for consent form shall also advise that documentation and other information relating to the application have been filed and are available for review at the department.

A municipality receiving a request for consent form shall have 30 days from the date of receipt of a copy of the application and request for consent form to file with the department the information requested, and its consent of, or objections to, the application. Municipal consent or objection to a groundwater remedial action shall be by resolution of the governing body of the municipality unless the governing body has, by resolution, delegated such authority to a qualified officer or entity thereof, in which case the endorsement shall be signed by the designated officer or official of the entity. Notwithstanding that a municipality objects to a permit application or fails to file a consent or objection to the permit application, the department may approve the applicant's permit application to discharge groundwater to surface water.

c. An application pursuant to subsection a. of this section shall be deemed complete, for the purposes of departmental review, within 30 days of the filing of the application with the department unless the department notifies the applicant, in writing, prior to expiration of the 30 days that the application has failed to satisfy one or more of the items identified in subsection a. of this section. If an application is determined to be complete, the department shall review and take final action on the completed application within 60 days from commencement of the review, or, if the parties mutually agree to a 30 day extension, within 90 days

therefrom. The review period for a completed application shall commence immediately upon termination of the 30-day period, or upon determination by the department that the application is complete, whichever occurs first. If the department fails to take final action on a permit application for a general permit in the time frames set forth in this subsection, that general permit shall be deemed to have been approved by the department. The department shall review an application for a permit pursuant to subsection a. of this section and shall take action on that application pursuant to the time frames set forth in this subsection, notwithstanding that all of the municipal approvals have not been obtained, unless such approvals would materially affect the terms and conditions of the permit, except that in such instances the department may condition its approval of the application on the necessary municipal approvals being subject to the terms and conditions of the application.

d. The department may issue a general permit for the discharge of groundwater to surface water pursuant to a groundwater remedial action of discharged petroleum products as provided in subsection a. of this section.

e. (1) The department may not require a municipal consent of a treatment works application for a groundwater remedial action for which a permit application is submitted pursuant to subsection a. of this section.

(2) If a completed application for a treatment works approval for a groundwater remedial action is filed with the department at the same time as an application for a general permit therefor, the department shall concurrently review the two applications, except that the review of the application for the treatment works approval for a groundwater remedial action shall not be subject to the time frames set forth in subsection c. of this section.

f. The provisions of this section shall apply to applications filed on or after the effective date of this act, except that the Department of Environmental Protection may implement any of the provisions of this section prior to that date.

g. The department may, in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.), adopt rules and regulations to implement the provisions of this act.

h. For purposes of this section:

"General permit" means a permit issued by the department for similar discharges.

"Groundwater remedial action" means the removal or abatement of one or more pollutants in a groundwater source.

"Local public entity" means a sewerage authority established pursuant to P.L.1946, c. 138 (C. 40:14A-1 et seq.), a municipal authority established pursuant to P.L.1957, c. 183 (C. 40:14B-1 et seq.), the Passaic Valley Sewerage

Commissioners continued pursuant to R.S. 58:14-2, a joint meeting established pursuant to R.S. 40:63-68 et seq. or a local unit authorized to operate a sewerage facility pursuant to N.J.S. 40A:26A-1 et seq., or any predecessor act.

"Underground storage tank" shall have the same meaning as in section 2 of P.L.1986, c. 102 (C. 58:10A-22), except that as used herein underground storage tanks shall include:

- (1) farm underground storage tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
- (2) underground storage tanks used to store heating oil for on-site consumption in a nonresidential building with a capacity of 2,000 gallons or less; and
- (3) underground storage tanks used to store heating oil for on-site consumption in a residential building.

58:10A-8. Establishment of more stringent effluent limitations for point source or group of point sources

Whenever the commissioner finds that discharges from a point source or a group of point sources with the application of the effluent limitations authorized in this act, which effluent limitations are as stringent as the best available technology economically achievable as provided for in the Federal Act or State law, would interfere with the attainment and maintenance of applicable water quality standards, the commissioner may establish more stringent effluent limitations for each such point source or group of point sources, which effluent limitations can reasonably be expected to contribute to the attainment and maintenance of the applicable water quality standards. Prior to the establishment of any more stringent effluent limitations under this section, the commissioner shall publish a notice of his intent to establish such limitations and, upon request of a person affected by any such limitations, the commissioner shall hold a public hearing to determine if there is a reasonable relationship between the economic and social costs of achieving such limitations, including any economic or social dislocation in the affected community or communities, and the social and environmental benefits to be obtained, including the objective of restoring and maintaining the water quality of the State, and to determine whether such effluent limitations can be implemented with available technology or with other control strategies. If a person affected by any such limitations demonstrates at the hearing that there is no reasonable relationship between the economic and social costs of compliance and the benefits to be obtained, the commissioner shall modify any such limitations as they may apply to that person.

58:10A-9. Applications for permits; fees; public notice; public inspection;

hearing; employees to administer act

Applications for permits shall be submitted within such times, on such forms, and with such signatures as may be prescribed by the commissioner and shall contain such information as he may require. The commissioner shall, in accordance with a fee schedule adopted by regulation, establish and charge reasonable annual administrative fees, which fees shall be based upon, and shall not exceed, the estimated cost of processing, monitoring and administering the NJPDES permits. Said fees shall be deposited to the credit of the State and be deemed as part of the General State Fund. The Legislature shall annually appropriate an amount equivalent to the amount anticipated to be collected as fees charged under this section in support of NJPDES program.

b. The commissioner shall give public notice of every complete application for a permit in a manner designed to inform interested and potentially interested persons, affected states and appropriate governmental agencies of his proposed determination to issue or deny a permit. The notice shall announce a period of at least 30 days during which the interested persons may request additional facts, submit written views, and request a public hearing on the proposed discharge or determination. All written comments so submitted shall be retained and considered by the commissioner in formulating his final determination with respect to the permit application. The commissioner may give combined notice of two or more permit applications and proposed determinations provided that the requirements of this section are observed for each application.

c. All permit applications, documented information concerning actual and proposed discharges, comments received from the public, and draft and issued permits shall be made available to the public for inspection and for duplication. At his discretion, the commissioner may also make available any other records, reports, plans or information pertaining to permit applicants or permittees, but he shall protect from disclosure any information, other than effluent data, upon a showing by any person that such information, if made public, would divulge methods or processes entitled to protection as trade secrets of such person. The commissioner may prescribe reasonable fees to reimburse the department for duplication expenses under this section.

d. The commissioner shall hold a public hearing on a permit application before a final determination, if a significant showing of interest on the part of the public appears in favor of holding such a hearing. At his discretion, the commissioner may also hold such a hearing on his own motion or if requested to so do by any other interested person. Public notices of every public hearing under this subsection, including a concise statement of the issues to be considered therein, shall be given at least 30 days in advance, and shall be circulated at least as widely as was the notice of the permit application. The commissioner may hold a single hearing on two or more applications. To the extent feasible, he shall afford all persons or representatives of all points of view an opportunity to appear, but may so allocate hearing time as to exclude repetitious, redundant, or irrelevant matter. All testimony and documentary

material submitted at the hearing shall be considered by the commissioner in formulating his final determination.

e. The commissioner may appoint and employ such persons as he deems necessary to enforce and administer the provisions of this act, and determine their qualifications, term of office, duties and compensation, all without regard to the provisions of Title 11, Civil Service, of the Revised Statutes.

58:10A-10. Violations; remedies, fines and penalties; enforcement; forfeiture of conveyances

a. Whenever the commissioner finds that any person is in violation of any provision of this act, he shall:

(1) Issue an order requiring any such person to comply in accordance with subsection b. of this section; or

(2) Bring a civil action in accordance with subsection c. of this section; or

(3) Levy a civil administrative penalty in accordance with subsection d. of this section; or

(4) Bring an action for a civil penalty in accordance with subsection e. of this section; or

(5) Petition the Attorney General to bring a criminal action in accordance with subsection f. of this section.

Use of any of the remedies specified under this section shall not preclude use of any other remedy specified.

In the case of one or more pollutants for which interim enforcement limits have been established pursuant to an administrative order, including an administrative consent order, by the department or a local agency, the permittee shall be liable for the enforcement limits stipulated therein.

b. Whenever the commissioner finds that any person is in violation of any provision of this act, he may issue an order (1) specifying the provision or provisions of this act, or the rule, regulation, water quality standard, effluent limitation, or permit of which he is in violation, (2) citing the action which caused such violation, (3) requiring compliance with such provision or provisions, and (4) giving notice to the person of his right to a hearing on the matters contained in the order.

c. The commissioner is authorized to commence a civil action in Superior Court for appropriate relief for any violation of this act or of a permit issued hereunder. Such relief may include, singly or in combination:

(1) A temporary or permanent injunction;

(2) Assessment of the violator for the reasonable costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and litigating the case under this subsection;

(3) Assessment of the violator for any reasonable cost incurred by the State in removing, correcting or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants for which the action under this subsection may have been brought;

(4) Assessment against the violator of compensatory damages for any loss or destruction of wildlife, fish or aquatic life, or other natural resources, and for any other actual damages caused by an unauthorized discharge;

(5) Assessment against a violator of the actual amount of any economic benefits accruing to the violator from a violation. Economic benefits may include the amount of any savings realized from avoided capital or noncapital costs resulting from the violation; the return earned or that may be earned on the amount of avoided costs; any benefits accruing to the violator as a result of a competitive market advantage enjoyed by reason of the violation; or any other benefits resulting from the violation.

Assessments under paragraph (4) of this subsection shall be paid to the State Treasurer, except that compensatory damages shall be paid by specific order of the court to any persons who have been aggrieved by the unauthorized discharge. Assessments pursuant to actions brought by the commissioner under paragraphs (2), (3) and (5) of this subsection shall be paid to the "Clean Water Enforcement Fund," established pursuant to section 12 of P.L.1990, c. 28 (C.58:10A-14.4).

d. (1)(a) The commissioner is authorized to assess, in accordance with a uniform policy adopted therefor, a civil administrative penalty of not more than \$50,000.00 for each violation and each day during which such violation continues shall constitute an additional, separate, and distinct offense. Any amount assessed under this subsection shall fall within a range established by regulation by the commissioner for violations of similar type, seriousness, and duration. The commissioner shall adopt, by regulation, a uniform assessment of civil penalties policy by January 1, 1992.

(b) In adopting rules for a uniform penalty policy for determining the amount of a penalty to be assessed, the commissioner shall take into account the type, seriousness, including extent, toxicity, and frequency of a violation based upon the harm to public health or the environment resulting from the violation, the economic benefits from the violation gained by the violator, the degree of cooperation or recalcitrance of the violator in remedying the violation, any

measures taken by the violator to avoid a repetition of the violation, any unusual or extraordinary costs directly or indirectly imposed on the public by the violation other than costs recoverable pursuant to paragraph (3) or (4) of subsection c. of this section, and any other pertinent factors that the commissioner determines measure the seriousness or frequency of the violation, or conduct of the violator.

(c) In addition to the assessment of a civil administrative penalty, the commissioner may, by administrative order and upon an appropriate finding, assess a violator for costs authorized pursuant to paragraphs (2) and (3) of subsection c. of this section.

(2) No assessment shall be levied pursuant to this subsection until after the discharger has been notified by certified mail or personal service. The notice shall include a reference to the section of the statute, regulation, order or permit condition violated; a concise statement of the facts alleged to constitute a violation; a statement of the amount of the civil penalties to be imposed; and a statement of the party's right to a hearing. The ordered party shall have 20 days from receipt of the notice within which to deliver to the commissioner a written request for a hearing. After the hearing and upon finding that a violation has occurred, the commissioner may issue a final order after assessing the amount of the fine specified in the notice. If no hearing is requested, then the notice shall become a final order after the expiration of the 20-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order.

(3) If a civil administrative penalty imposed pursuant to this subsection is not paid within 30 days of the date that the penalty is due and owing, and the penalty is not contested by the person against whom the penalty has been assessed, or the person fails to make a payment pursuant to a payment schedule entered into with the department, an interest charge shall accrue on the amount of the penalty due and owing from the 30th day after the date on which the penalty was due and owing. The rate of interest shall be that established by the New Jersey Supreme Court for interest rates on judgments, as set forth in the Rules Governing the Courts of the State of New Jersey.

(4) The authority to levy a civil administrative penalty is in addition to all other enforcement provisions in this act, and the payment of any assessment shall not be deemed to affect the availability of any other enforcement provisions in connection with the violation for which the assessment is levied. Any civil administrative penalty assessed under this section may be compromised by the commissioner upon the posting of a performance bond by the violator, or upon such terms and conditions as the commissioner may establish by regulation, except that the amount compromised shall not be more than 50% of the assessed penalty, and in no instance shall the amount of that compromised penalty be less than the statutory minimum amount, if applicable, prescribed in section 6 of P.L.1990, c. 28 (C.58:10A-10.1). In the case of a violator who is a local agency that enters into an administrative consent order, the terms of which require the local agency to take prescribed measures to comply with its permit,

the commissioner shall have full discretion to compromise the amount of penalties assessed or due for violations occurring during a period up to 24 months preceding the entering into the administrative consent order; except that the amount of the compromised penalty may not be less than the statutory minimum amount, if applicable, prescribed in section 6 of P.L.1990, c. 28 (C.58:10A-10.1). A civil administrative penalty assessed against a local agency for a violation of an administrative consent order may not be compromised by more than 50% of the assessed penalty. In no instance shall the amount of a compromised penalty assessed against a local agency be less than the statutory minimum amount, if applicable, prescribed in section 6 of P.L.1990, c. 28 (C.58:10A-10.1). The commissioner shall not compromise the amount of any component of a civil administrative penalty which represents the economic benefit gained by the violator from the violation.

(5) A person, other than a local agency, appealing a penalty assessed against that person in accordance with this subsection, whether contested as a contested case pursuant to P.L.1968, c. 410 (C.52:14B-1 et seq.) or by appeal to a court of competent jurisdiction, shall, as a condition of filing the appeal, post with the commissioner a refundable bond, or other security approved by the commissioner, in the amount of the civil administrative penalty assessed. If the department's assessed penalty is upheld in full or in part, the department shall be entitled to a daily interest charge on the amount of the judgment from the date of the posting of the security with the commissioner and until paid in full. The rate of interest shall be that established by the New Jersey Supreme Court for interest rates on judgments, as set forth in the Rules Governing the Courts of the State of New Jersey. In addition, if the amount of the penalty assessed by the department is upheld in full in an appeal of the assessment at an administrative hearing or at a court of competent jurisdiction, the person appealing the penalty shall reimburse the department for all reasonable costs incurred by the department in preparing and litigating the imposition of the assessment, except that no litigation costs shall be imposed where the appeal ultimately results in a reduction or elimination of the assessed penalty.

(6) A civil administrative penalty imposed pursuant to a final order:

(a) may be collected or enforced by summary proceedings in a court of competent jurisdiction in accordance with "the penalty enforcement law," N.J.S.2A:58-1 et seq.; or

(b) shall constitute a debt of the violator or discharger and the civil administrative penalty may be docketed with the clerk of the Superior Court, and shall have the same standing as any judgment docketed pursuant to N.J.S.2A:16-1; except that no lien shall attach to the real property of a violator pursuant to this subsection if the violator posts a refundable bond or other security with the commissioner pursuant to an appeal of a final order to the Appellate Division of the Superior Court. No lien shall attach to the property of a local agency.

(7) The commissioner shall refer to the Attorney General and the county prosecutor of the county in which the violations occurred the record of violations of any permittee determined to be a significant noncomplier.

e. Any person who violates this act or an administrative order issued pursuant to subsection b. or a court order issued pursuant to subsection c., or who fails to pay a civil administrative penalty in full pursuant to subsection d., or to make a payment pursuant to a payment schedule entered into with the department, shall be subject upon order of a court to a civil penalty not to exceed \$50,000.00 per day of such violation, and each day's continuance of the violation shall constitute a separate violation. Any penalty incurred under this subsection may be recovered with costs, and, if applicable, interest charges, in a summary proceeding pursuant to "the penalty enforcement law" (N.J.S.2A:58-1 et seq.). In addition to any civil penalties, costs or interest charges, the court, in accordance with paragraph (5) of subsection c. of this section, may assess against a violator the amount of any actual economic benefits accruing to the violator from the violation. The Superior Court shall have jurisdiction to enforce "the penalty enforcement law" in conjunction with this act.

f. (1)(a) Any person who purposely, knowingly, or recklessly violates this act, and the violation causes a significant adverse environmental effect, shall, upon conviction, be guilty of a crime of the second degree, and shall, notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, be subject to a fine of not less than \$25,000 nor more than \$250,000 per day of violation, or by imprisonment, or by both.

(b) As used in this paragraph, a significant adverse environmental effect exists when an action or omission of the defendant causes: serious harm or damage to wildlife, freshwater or saltwater fish, any other aquatic or marine life, water fowl, or to their habitats, or to livestock, or agricultural crops; serious harm, or degradation of, any ground or surface waters used for drinking, agricultural, navigational, recreational, or industrial purposes; or any other serious articulable harm or damage to, or degradation of, the lands or waters of the State, including ocean waters subject to its jurisdiction pursuant to P.L.1988, c. 61 (C.58:10A-47 et seq.).

(2) Any person who purposely, knowingly, or recklessly violates this act, including making a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under this act, or by falsifying, tampering with, or rendering inaccurate any monitoring device or method required to be maintained pursuant to this act, or by failing to submit a monitoring report, or any portion thereof, required pursuant to this act, shall, upon conviction, be guilty of a crime of the third degree, and shall, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine of not less than \$5,000 nor more than \$75,000 per day of violation, or by imprisonment, or by both.

(3) Any person who negligently violates this act, including making a false

statement, representation, or certification in any application, record, or other document filed or required to be maintained under this act, or by falsifying, tampering with, or rendering inaccurate any monitoring device or method required to be maintained pursuant to this act, or by failing to submit a discharge monitoring report, or any portion thereof, required pursuant to this act, shall, upon conviction, be guilty of a crime of the fourth degree, and shall, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment, or by both.

(4) Any person who purposely or knowingly violates an effluent limitation or other condition of a permit, or who discharges without a permit, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, as defined in subsection b. of N.J.S.2C:11-1, shall, upon conviction, be guilty of a crime of the first degree, and shall, notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, be subject to a fine of not less than \$50,000 nor more than \$250,000, or, in the case of a corporation, a fine of not less than \$200,000 nor more than \$1,000,000, or by imprisonment or by both.

(5) As used in this subsection, "purposely," "knowingly," "recklessly," and "negligently" shall have the same meaning as defined in N.J.S.2C:2-2.

g. All conveyances used or intended for use in the purposeful or knowing discharge, in violation of the provisions of P.L.1977, c. 74 (C.58:10A-1 et seq.), of any pollutant or toxic pollutant are subject to forfeiture to the State pursuant to the provisions of P.L.1981, c. 387 (C.13:1K-1 et seq.).

h. The amendatory portions of this section, as set forth in P.L.1990, c. 28 (C.58:10A-10.1 et al.), except for subsection f. of this section, shall not apply to violations occurring prior to July 1, 1991.

58:10A-10.1. Mandatory civil administrative penalties

a. The provisions of section 10 of P.L.1977, c. 74 (C.58:10A-10), or any rule or regulation adopted pursuant thereto to the contrary notwithstanding, the department shall assess, with no discretion, a mandatory minimum civil administrative penalty for the violations enumerated in subsections b., c., and d. of this section.

b. The department shall assess a minimum mandatory civil administrative penalty of \$1,000 against a violator for each serious violation, which assessment shall be made within six months of the serious violation.

c. The department shall assess a minimum mandatory civil administrative penalty of \$5,000 against a violator for the violation that causes the violator to be, or to continue to be, a significant noncomplier.

d. The department shall assess a minimum mandatory civil administrative penalty of \$100 for each effluent parameter omitted on a discharge monitoring report required to be submitted to the department, and each day during which the effluent parameter information is overdue shall constitute an additional, separate, and distinct offense, except that in no instance shall the total civil administrative penalty assessed pursuant to this subsection exceed \$50,000 per month for any one discharge monitoring report. The civil administrative penalty assessed pursuant to this subsection shall accrue as of the fifth day following the date on which the discharge monitoring report was due and shall continue to accrue for 30 days. The commissioner may continue to assess civil administrative penalties beyond the 30-day period until submission of the overdue discharge monitoring report or overdue information. A permittee may contest the assessment of the civil administrative penalty required to be assessed pursuant to this subsection by notifying the commissioner in writing, within 30 days of the date on which the effluent parameter information was required to be submitted to the department, of the existence of extenuating circumstances beyond the control of the permittee, including circumstances that prevented timely submission of the discharge monitoring report, or portion thereof, or, if the civil administrative penalty is imposed because of an inadvertent omission of one or more effluent parameters, the permittee may submit, without liability for a civil administrative penalty assessed pursuant to this subsection or subsection c. of this section, the omitted information within 10 days of receipt by the permittee of notice of omission of the parameter or parameters.

e. If a violator establishes, to the satisfaction of the department, that a single operational occurrence has resulted in the simultaneous violation of more than one pollutant parameter, the department may consider, for purposes of calculating the mandatory civil administrative penalties to be assessed pursuant to subsections b. and c. of this section, the violation of the interrelated permit parameters to be a single violation.

f. The requirement that the department assess a minimum civil administrative penalty pursuant to this section shall in no way be construed to limit the authority of the department to assess a civil administrative penalty or bring an action for a civil penalty for a violation at any time after a violation occurred or to assess a more stringent civil administrative penalty or civil penalty against a person pursuant to section 10 of P.L.1977, c. 74 (C.58:10A-10).

g. The provisions of this section shall not apply to violations occurring prior to the effective date of this section.

58:10A-10.2. Affirmative defenses

a. A person may be entitled to an affirmative defense to liability for a mandatory assessment of a civil administrative penalty pursuant to section 6 of P.L.1990, c. 28 (C.58:10A-10.1) for a violation of an effluent limitation occurring

as a result of an upset, an anticipated or unanticipated bypass, or a testing or laboratory error. A person shall be entitled to an affirmative defense only if, in the determination of the department or delegated local agency, the person satisfies the provisions of subsection b., c., e. or f., as applicable, of this section.

b. A person asserting an upset as an affirmative defense pursuant to this section, except in the case of an approved maintenance operation, shall notify the department or the local agency of an upset within 24 hours of the occurrence, or of becoming aware of the occurrence, and, within five days thereof, shall submit written documentation, including properly signed, contemporaneous operating logs, or other relevant evidence, on the circumstances of the violation, and demonstrating, as applicable, that:

(1) the upset occurred, including the cause of the upset and, as necessary, the identity of the person causing the upset, except that, in the case of a treatment works, the local agency may certify that despite a good faith effort it is unable to identify the cause of the upset, or the person causing the upset;

(2) the permitted facility was at the time being properly operated;

(3) the person submitted notice of the upset as required pursuant to this section, or, in the case of an upset resulting from the performance by the permittee of maintenance operations, the permittee provided prior notice and received an approval therefor from the department or the delegated local agency; and

(4) the person complied with any remedial measures required by the department or delegated local agency.

c. A person asserting an unanticipated bypass as an affirmative defense pursuant to this section shall notify the department or the local agency of the unanticipated bypass within 24 hours of its occurrence, and, within five days thereof, shall submit written documentation, including properly signed, contemporaneous operating logs, or other relevant evidence, on the circumstances of the violation, and demonstrating that:

(1) the unanticipated bypass occurred, including the circumstances leading to the bypass;

(2) the permitted facility was at the time being properly operated;

(3) the person submitted notice of the upset as required pursuant to this section; and

(4) the person complied with any remedial measures required by the department or delegated local agency;

(5) the bypass was unavoidable to prevent loss of life, personal injury, or

severe property damage; and

(6) there was no feasible alternative to the bypass such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of downtime, except that the provisions of this paragraph shall not apply to a bypass occurring during normal periods of equipment downtime or preventive maintenance if, on the basis of the reasonable engineering judgment of the department or delegated local agency, back-up equipment should have been installed to avoid the need for a bypass.

d. Nothing contained in subsection b. or c. of this section shall be construed to limit the requirement to comply with the provisions of paragraph (8) of subsection f. of section 6 of P.L.1977, c. 74 (C.58:10A-6).

e. A person may assert an anticipated bypass as an affirmative defense pursuant to this section only if the person provided prior notice to the department or delegated local agency, if possible, at least 10 days prior to the date of the bypass, and the department or delegated local agency approved the bypass, and if the person is able to demonstrate that:

(1) the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and

(2) there was no feasible alternative to the bypass such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of downtime, except that the provisions of this paragraph shall not apply to a bypass occurring during normal periods of equipment downtime or preventive maintenance if, on the basis of the reasonable engineering judgment of the department or delegated local agency, back-up equipment should have been installed to avoid the need for a bypass.

f. A person asserting a testing or laboratory error as an affirmative defense pursuant to this section shall have the burden to demonstrate, to the satisfaction of the department, that a serious violation involving the exceedance of an effluent limitation was the result of unanticipated test interferences, sample contamination, analytical defects, or procedural deficiencies in sampling or other similar circumstances beyond the control of the permittee.

g. A determination by the department on a claim that a violation of an effluent limitation was caused by an upset, a bypass or a testing or laboratory error shall be considered final agency action on the matter for the purposes of the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), and shall be subject only to review by a court of competent jurisdiction.

h. An assertion of an upset, a bypass or a testing or laboratory error as an affirmative defense pursuant to this section may not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or

improper operation.

i. If the department determines, pursuant to the provisions of this section, that a violation of an effluent limitation was caused by an upset, a bypass or a testing or laboratory error, the commissioner shall waive any mandatory civil administrative penalty required to be assessed pursuant to section 6 of P.L.1990, c. 28 (C.58:10A-10.1), and the violation shall not be considered a serious violation or violation causing a person to be designated a significant noncomplier.

j. The affirmative defense for an upset, a bypass or a testing or laboratory error provided in this section shall only apply to the imposition of mandatory penalties pursuant to section 6 of P.L.1990, c. 28 (C.58:10A-10.1) for serious violations and for determining a significant noncomplier. Nothing in this act shall be construed to limit the authority of the department, or a delegated local agency, to adopt regulations or permit conditions that include or do not include an upset, a bypass or a testing or laboratory error, using different standards, as a defense for any other exceedance of an effluent limitation.

58:10A-10.3. Request for information relevant to discharge of pollutant; subpoena; duties of person receiving request; destruction of records

a. The department may request that any person whom the department has reason to believe has, or may have, information relevant to a discharge or potential discharge of a pollutant, including, but not limited to, any person having generated, treated, transported, stored, or disposed of the pollutant, or any person having arranged for the transportation, storage, treatment or disposal of the pollutant, shall provide, upon receipt of written notice therefor, the following information to the department:

(1) The nature, extent, source, and location of the discharge, or potential discharge;

(2) Identification of the nature, type, quantity, source, and location of the pollutant or pollutants;

(3) The identity of, and other relevant information concerning, the generator or transporter of the pollutant, or any other person subject to liability for the discharge or potential discharge;

(4) The ability of any person liable, or potentially liable, for the discharge, or potential discharge, to pay for, or perform, the cleanup and removal, including the availability of appropriate insurance coverage.

Information requested by the department shall be provided in the form and manner prescribed by the department, which may include documents or information in whatever form stored or recorded.

b. The commissioner may issue subpoenas requiring attendance and testimony under oath of witnesses before, or the production of documents or information, in whatever form stored or recorded, to him or to a representative designated by the commissioner. Service of a subpoena shall be by certified mail or personal service. Any person who fails to appear, give testimony, or produce documents in response to a subpoena issued pursuant to this subsection, shall be subject to the penalty provisions of section 10 of P.L.1977, c. 74 (C.58:10A-10). Any person who, having been sworn, knowingly gives false testimony or knowingly gives false documents or information to the department is guilty of perjury and is subject to the penalty provisions of section 10 of P.L.1977, c. 74.

c. A person receiving a request for information made pursuant to subsection a. of this section, or to a subpoena issued pursuant to subsection b. of this section, shall:

(1) be required to conduct a diligent search of all documents in his possession, custody or control, and to make reasonable inquiries of present and past employees who may have knowledge or documents relevant thereto;

(2) have a continuing obligation to supplement the information if additional relevant information is discovered, or if it is determined that the information previously provided was false, inaccurate or misleading; and

(3) grant the department access, at reasonable times, to any vessel, facility, property or location to inspect and copy all relevant documents or, at the department's request, copy and furnish to the department all such documents.

d. No person may destroy any records relating to a discharge or potential discharge to surface water within five years of the discharge, or to a discharge or potential discharge to ground water at any time without the prior written permission of the commissioner.

58:10A-10.4. Summons for civil penalty assessment of \$5,000 or less

The Department of Environmental Protection or a delegated local agency may issue a summons for a violation of any provision of P.L.1977, c. 74 (C. 58:10A-1 et seq.), including, in the case of a delegated local agency, a violation of any rule, regulation or pretreatment standard adopted by a delegated local agency if the amount of the civil penalty assessed is \$5,000 or less. The summons shall be enforceable, in accordance with the "penalty enforcement law," N.J.S. 2A:58-1 et seq., in the municipal court of the territorial jurisdiction in which the violation occurred. The summons shall be signed and issued by any person authorized to enforce the provisions of P.L.1977, c. 74 (C. 58:10A-1 et seq.). Proceedings before, and appeals from a decision of, a municipal court shall be in accordance with the Rules Governing the Court of the State of New

Jersey. Of the penalty amount collected pursuant to an action brought in a municipal court pursuant to this section, 10% shall be paid to the municipality or municipalities in which the court retains jurisdiction for use for court purposes, with the remainder to be retained by the department or the delegated local agency.

58:10A-10.5. Local agencies authorized to issue civil administrative penalties or assess costs; notice to violator; request for hearing

A delegated local agency may, after consultation with a compliance officer designated by the department, issue a civil administrative penalty for any violation of the provisions of P.L.1977, c. 74 (C. 58:10A-1 et seq.), including a violation of any rule, regulation or pretreatment standard adopted by a delegated local agency, or assess, by civil administrative order, any costs recoverable pursuant to subsection c. of section 10 of that act, including the reasonable costs of investigation and inspection, and preparing and litigating the case before an administrative law judge pursuant to this section, except assessments for compensatory damages and economic benefits. Notice of the penalty or assessment shall be given to the violator in writing by the delegated local agency, and payment of the penalty or assessment shall be due and payable, unless a hearing is requested in writing by the violator, within 20 days of receipt of notice. If a hearing is requested, the penalty or assessment shall be deemed a contested case and shall be submitted to the Office of Administrative Law for an administrative hearing in accordance with sections 9 and 10 of P.L.1968, c. 410 (C. 52:14B-9 and 52:14B-10).

58:10A-10.6. Report and decision of administrative law judge; review by head of delegated local agency; time for adoption, rejection or modification

Upon conclusion of an administrative hearing held pursuant to section 2 of P.L.1991, c. 8 (C. 58:10A-10.5), the administrative law judge shall prepare and transmit a recommended report and decision on the case to the head of the delegated local agency and to each party of record, as prescribed in subsection c. of section 10 of P.L.1968, c. 410 (C. 52:14B-10). The head of the delegated local agency shall afford each party of record an opportunity to file exceptions, objections and replies thereto, and to present arguments, either orally or in writing, as required by the delegated local agency. After reviewing the record of the administrative law judge, and any filings received thereon, but not later than 45 days after receipt of the record and decision, the head of the delegated local agency shall adopt, reject, or modify the recommended report and decision. If the head of the delegated local agency fails to modify or reject the report within the 45-day period, the decision of the administrative law judge shall be deemed adopted as the final decision of the head of the delegated local agency, and the recommended report and decision shall be made a part of the record in the case. For good cause shown, and upon certification by the Director of the Office

of Administrative Law and the head of the delegated local agency, the time limits established herein may be extended.

58:10A-10.7. Final decision or order; findings; notification of parties; effective date of decision

A final decision or order of the head of the delegated local agency shall be in writing or stated in the record. A final decision shall include separately stated findings of fact and conclusions of law, based upon the evidence of record at the hearing of the administrative law judge. Findings of fact shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. A final decision or order may incorporate by reference any or all of the recommendations of the administrative law judge.

Parties of record shall be notified either by personal service or by mail of any final decision or order. Upon request, a copy of the decision or order shall be delivered or mailed forthwith by registered or certified mail to each party of record and to a party's attorney of record.

A final decision or order shall be effective on the date of delivery or mailing, whichever is sooner, to the party or parties of record, or shall be effective on any date thereafter, as the delegated local agency may provide in the decision or order. The date of delivery or mailing shall be stamped on the face of the final decision or order. A final decision or order shall be considered a final agency action, and shall be appealable in the same manner as a final agency action of a State department or agency.

58:10A-10.8. Appeals; posting of bond or security; interest charged; collection and enforcement proceeding

a. A person appealing a civil administrative penalty or assessment levied in accordance with section 2 of P.L.1991, c. 8 (C. 58:10A-10.5), whether contested as a contested case pursuant to P.L.1968, c. 410 (C. 52:14B-1 et seq.) or by appeal to a court of competent jurisdiction, shall, as a condition of filing the appeal, post with the delegated local agency a refundable bond, or other security approved by the delegated local agency, in the amount of the civil administrative penalty or assessment levied pursuant to a civil administrative hearing. If the civil administrative penalty or assessment is upheld in whole or in part, the delegated local agency shall be entitled to a daily interest charge on the amount of the judgment from the date of the posting of the security with the commissioner until that amount is paid in full. The rate of interest shall be that established by the New Jersey Supreme Court for interest rates on judgments, as set forth in the Rules Governing the Courts of the State of New Jersey.

b. A person who is assessed a civil administrative penalty, or is subject to an assessment levied pursuant to section 2 of P.L.1991, c. 8 (C. 58:10A-10.5), and

fails to contest or to pay the penalty or assessment, or fails to enter into a payment schedule with the delegated local agency within 30 days of the date that the penalty or assessment is due and owing, shall be subject to an interest charge on the amount of the penalty or assessment from the date that the amount was due and owing. The rate of interest shall be that authorized pursuant to subsection a. of this section.

c. Any person who fails to pay a civil administrative penalty or assessment, in whole or in part, when due and owing, or who fails to agree to a payment schedule therefor, shall be subject to the civil penalty provisions of subsection e. of section 10, of P.L.1977, c. 74 (C. 58:10A-10).

d. A civil administrative penalty or assessment imposed pursuant to a final order:

(1) may be collected or enforced by summary proceeding in a court of competent jurisdiction in accordance with the "penalty enforcement law," (N.J.S. 2A:58-1 et seq.); or

(2) shall constitute a debt of the violator, and the civil administrative penalty may be docketed with the clerk of the Superior Court, and shall have the same standing as any judgment docketed pursuant to N.J.S. 2A:16-1.

58:10A-10.9. Reimbursement for costs of administrative hearings

The Director of the Office of Administrative Law shall establish by regulation adopted pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.), a schedule of reimbursement for the costs to that office of an administrative hearing provided pursuant to P.L.1991, c. 8 (C. 58:10A-10.4 et seq.). Reimbursements shall be paid by the delegated local agency, but shall be recoverable from the violator by that agency, if the prevailing party, along with such other costs as may be recoverable for preparing and litigating the case. An assessment for hearing costs shall be included in the final decision or order issued by the head of the delegated local agency.

58:10A-10.10. Municipal treatment works exceeding effluent limitations; uniform sampling and reporting requirements

Whenever the commissioner finds that effluent limitations under a discharge permit, issued pursuant to P.L.1977, c. 74 (C. 58:10A-1 et seq.), are being exceeded by a county or municipal utilities authority organized pursuant to P.L.1957, c. 183 (C. 40:14B-1 et seq.), which provides disposal or discharge but not treatment of the effluent of one or more municipal treatment works, and the commissioner further finds that the violation of the effluent limitation is caused by effluents discharged by one or more municipal treatment works into the disposal facilities of the county or municipal utilities authority, the commissioner

shall, in accordance with the provisions of subsection a. of section 10 of P.L.1977, c. 74 (C. 58:10A-10), issue an order for compliance to, or take such other action authorized thereunder against, the owner or operator of the municipal treatment works determined to be discharging pollutants into the utilities authority's facilities in violation of the discharge permit limitations of the municipal treatment works. The commissioner shall prescribe uniform sampling and reporting requirements for the county or municipal utilities authority and each of the municipal treatment works discharging effluents into the disposal facilities of the authority for the purpose of determining the source and extent of violation of permit requirements.

58:10A-10.11. Violation of an effluent limitation during permitted groundwater remedial action; availability of affirmative defense against liability; determination by department

a. A permittee shall be entitled to an affirmative defense against liability for any penalty assessable pursuant to section 10 of P.L.1977, c. 74 (C. 58:10A-10) or section 6 of P.L.1990, c. 28 (C. 58:10A-10.1) for a violation of an effluent limitation of a permit issued pursuant to P.L.1977, c. 74 (C. 58:10A-1 et seq.), which violation:

(1) occurs in the course of a permitted groundwater remedial action;

(2) is the first violation of that permit limitation; and

(3) involves an exceedance of a permit limitation that could not reasonably have been anticipated by the permittee, unless it is established by a preponderance of the evidence that the violation was the result of a negligent act or omission of the permittee.

Demonstration that an act or omission of a person performing groundwater remedial action accorded with generally accepted remedial action practices, and utilized the best technology reasonably available to the permittee for the approved remedial action at the time of the action, shall create a rebuttable presumption that the act or omission was not negligent.

b. An affirmative defense claim filed pursuant to subsection a. of this section shall be denied by the Department of Environmental Protection or a delegated local agency, as defined in section 3 of P.L.1977, c. 74 (C. 58:10A-3), as appropriate, if:

(1) the equipment used in the remedial action had not been properly maintained or was not being properly operated at the time of the violation, and the failure to properly maintain or operate the equipment was the proximate cause of the exceedance;

(2) the permittee fails, as required by law or rule or regulation, to provide in

a prompt manner to the department or a delegated local agency:

- (a) notification of the violation; and
 - (b) written information on the nature and extent of the permit exceedance and, if known, the reasons therefor;
 - (3) the permittee fails to take immediate measures, upon first becoming aware of the violation, to terminate the violation and to abate any adverse consequences therefrom; or
 - (4) the permittee fails to file with the department or delegated local agency a remedial action protocol, setting forth the procedures to be followed to prevent a recurrence of the exceedance.
- c. A determination by the department or delegated local agency on an affirmative defense claim made pursuant to subsection a. of this section shall be considered final agency action on the matter for purposes of the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.) and paragraph (5) of subsection d. of section 10 of P.L.1977, c. 74 (C. 58:10A-10).
- d. If the department approves an affirmative defense claim filed pursuant to subsection a. of this section, the permit exceedance shall not be considered a violation for the purposes of designating a person as a significant noncomplier under section 6 of P.L.1990, c. 28 (C. 58:10A-10.1).
- e. Nothing in this section shall be construed to limit the authority of the department to adopt regulations or permit conditions for groundwater remedial actions that exempt a violation for which an affirmative defense claim may be filed pursuant to the provisions of this section, or for exceedances of one or more permit parameters occurring during the start-up phase of a remedial action, as defined in a permit.

As used in this section "groundwater remedial action" means the removal or abatement of one or more pollutants in a groundwater source.

58:10A-11. Person with delegated responsibility to approve permits; qualifications

Notwithstanding any contrary provision of State law, no person to whom the commissioner has delegated responsibility to approve permits or portions thereof may accept this responsibility if such person receives, or has received during the previous two years, a significant portion of his income directly or indirectly from permit holders or applicants for a permit.

58:10A-12. Liberal construction; severability

This act shall be construed liberally. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provisions or applications, and to this end the provisions of this act are declared to be severable.

58:10A-13. Pending actions or proceedings, orders, regulations and rules; effect of act

This act shall not affect, impair or invalidate any action or proceeding, civil or criminal, brought by or against the department, pending on the effective date of this act: all such actions or proceedings may and shall be continued to final judgment, decree or decision, as if the foregoing provisions had not taken effect; nor shall this act affect orders, rules and regulations heretofore made, promulgated or issued by the department or other matters or proceedings pending before the department on the effective date of this act. Such orders, rules, regulations, matters or proceedings shall continue in full force and effect until amended or repealed pursuant to law.

58:10A-14. Legislative oversight committees

The Senate Committee on Energy and Environment and the Assembly Committee on Agriculture and Environment are hereby designated as the Legislative Oversight Committees for the Water Pollution Control Act. The Department of Environmental Protection is directed to submit any proposed rules or regulations to the Legislative Oversight Committees, prior to the holding of public hearings on such proposed rules or regulations and to promptly submit to either committee any information concerning the administration of said act which either Legislative Oversight Committee may request. The Legislative Oversight Committees shall review, evaluate and recommend alterations to any such proposed rules or regulations and shall recommend whatever administrative alterations it may choose in order to effectuate the Legislative intent of this act.

58:10A-14.1. Annual report on implementation and enforcement actions; notice to newspapers

a. On or before March 15, 1992, and annually thereafter, the department shall prepare a report on implementation and enforcement actions taken during the preceding calendar year by the department and delegated local agencies pursuant to P.L.1977, c. 74. Information in the report shall be compiled so as to distinguish, as applicable: enforcement actions taken by the department from those of delegated local agencies; violations of, and enforcement actions against, publicly owned treatment works from those of, or against, other permitted facilities; violations of effluent limitations from reporting

violations--including discharging monitoring reports, compliance schedule progress reports, and pretreatment reports--and other violations; and violations of effluent limitations for hazardous pollutants from those for nonhazardous pollutants. The report shall be transmitted to the Governor, the members of the Legislature, the Assembly Environment Quality Committee and the Senate Energy and Environment Committee, or their successors, and to the Office of Legislative Services not later than March 31 of each year.

b. Within 30 days of publication of the report pursuant to this section, the commissioner shall transmit a written notice to at least one newspaper in each county, with circulation throughout that county which shall:

(1) Identify the owner, trade name and location of all facilities listed as significant noncompliers;

(2) Identify all of the significant noncompliers who have been assessed penalties pursuant to section 6 of P.L.1990, c. 28 (C.58:10A-10.1), the amount of the penalties assessed against, and the amount paid by, each significant noncomplier;

(3) Indicate the availability of the annual reports required under this section, and the address and phone number for securing copies.

58:10A-14.2. Contents of annual report

a. The annual report provided pursuant to section 9 of P.L.1990, c. 28 (C.58:10A-14.1) shall include, but need not be limited to, the following information for the preceding calendar year:

(1) the number of facilities permitted by the department or delegated local agencies pursuant to P.L.1977, c. 74 (C.58:10A-1 et seq.) as of the end of the calendar year, by surface water discharge permits;

(2) the number of new permits or permit renewals issued;

(3) the number of permit approvals contested by a permittee or other party;

(4) the number of permit modifications, other than permit renewals;

(5) the number of schedules of compliance adopted pursuant to administrative orders or administrative consent agreements involving interim enforcement limits that relax permit limitations;

(6) the number of facilities, including publicly owned treatment works, inspected at least once by the department or local agencies;

(7) the number of enforcement actions resulting from facility inspections;

- (8) the number of actual permit violations;
- (9) the number of actual effluent violations constituting serious violations, including violations that are being contested;
- (10) the number of defenses for upsets, bypasses or testing or laboratory errors granted pursuant to section 7 of P.L.1990, c. 28 (C.58:10A-10.2) that involved a serious violation;
- (11) the number of permittees qualifying as significant noncompliers, including permittees contesting such designation;
- (12) the number of unpermitted discharges;
- (13) the number of pass throughs of pollutants;
- (14) the number of enforcement orders--administrative and judicial--issued for violations;
- (15) the number of violations for which civil penalties or civil administrative penalties have been assessed;
- (16) the number of violations of administrative orders or administrative consent orders, including violations of interim enforcement limits, or of schedule of compliance milestones for starting or completing construction, or for failing to attain full compliance;
- (17) the number of violations of schedules of compliance milestones for starting or completing construction, or attaining full compliance, that are out of compliance by 90 days or more from the date established in the compliance schedule;
- (18) the dollar amount of all assessed civil penalties and civil administrative penalties;
- (19) the dollar amount of enforcement costs recovered in a civil action or civil administrative action from a violator;
- (20) the dollar amount of civil administrative penalties and civil penalties collected, including penalties for which a penalty schedule has been agreed to by the violator;
- (21) the specific purposes for which penalty monies collected have been expended, displayed in line-item format by type of expenditure and including, but not limited to, position numbers and titles funded in whole or in part from these penalty monies; and

(22) the number of criminal actions filed by the Attorney General or county prosecutors pursuant to section 10 of P.L.1977, c. 74 (C.58:10A-10).

b. In addition to the information required pursuant to subsection a. of this section, the report shall:

(1) list the trade name of each permittee determined to be a significant noncomplier by the department or delegated local agency, and the address and permit number of the facility at which the violations occurred, and provide a brief description and the date of each violation, and the date that the violation was resolved, as well as the total number of violations committed by the permittee during the year;

(2) list the trade name of each permittee who is at least six months behind in the construction phase of a compliance schedule, as well as the address and permit number of the facility, and provide a brief description of the conditions violated and the cause of delay;

(3) list the trade name, address and permit number, of each permittee who has been convicted of criminal conduct pursuant to subsection f. of section 10 of P.L.1977, c. 74 (C.58:10A-10), or who has had any officer or employee convicted thereunder, and provide a brief description and the date of the violation or violations for which convicted;

(4) list the name and location of any local agency that has failed to file with the department information required by section 11 of P.L.1990, c. 28 (C.58:10A-14.3); and

(5) provide a summary assessment of the water quality of surface and ground waters affected by discharges subject to regulation pursuant to P.L.1977, c. 74 to the extent that such information is not otherwise required to be submitted to the United States Environmental Protection Agency.

c. The department may include in the report any other information it determines would provide a fuller profile of the implementation and enforcement of P.L.1977, c. 74. The department shall also include in the report any information that may be requested, in writing, not later than November 30 of the preceding year, for inclusion in the annual report, by the Assembly Environmental Quality Committee or the Senate Environmental Quality Committee, or their successors.

58:10A-14.3. Guidelines for providing information

The department shall adopt guidelines to be utilized by delegated local agencies, the Attorney General and county prosecutors in providing information to the department for inclusion in the report to be prepared in accordance with section 10 of this act , and prescribing the format in which the information is to

be provided. Every delegated local agency, the Attorney General, and each county prosecutor shall file with the department, not later than February 1 of each year, such information and in such form as may be required by the department. In the event that information required to be reported pursuant to this section is also required to be reported to the department within the immediately preceding 12 month period pursuant to another law, rule, regulation, or permit requirement, to the extent that identical information is required to be reported, the local agency shall be required only to resubmit the information that was previously reported to the department.

58:10A-14.4. Clean Water Enforcement Fund

There is created, in the Department of Environmental Protection, a special nonlapsing fund, to be known as the "Clean Water Enforcement Fund." Except as otherwise provided in P.L.1989, c. 122, all monies from penalties, fines, or recoveries of costs or improper economic benefits collected by the department pursuant to section 10 of P.L.1977, c. 74 (C.58:10A-10) on and after the effective date of this section, or section 6 of P.L.1990, c. 28 (C.58:10A-10.1) shall be deposited in the fund. Unless otherwise specifically provided by law, monies in the fund shall be utilized exclusively by the department for enforcement and implementation of the "Water Pollution Control Act," P.L.1977, c. 74 (C.58:10A-1 et seq.) and P.L.1990, c. 28 (C.58:10A-10.1 et al.). Any unobligated monies in the fund at the end of each fiscal year or monies not required for enforcement purposes in the next fiscal year shall be transferred to the "Wastewater Treatment Fund" established pursuant to subsection a. of section 15 of P.L.1985, c. 329, for use in accordance with the provisions of that act.

58:10A-14.5. Wastewater Treatment Operators' Training Account

There is created in the Department of Environmental Protection a special nonlapsing account, to be known as the "Wastewater Treatment Operators' Training Account." Monies deposited in the account shall be used to provide training, including continuing education, courses for wastewater treatment operators. A court shall order to be deposited into the account 10% of the amount of any penalty assessed and collected in an action brought by a local agency pursuant to section 10 of P.L.1977, c. 74 (C.58:10A-10) or section 6 of P.L.1990, c. 28 (C.58:10A-10.1), or by a public entity pursuant to section 7 of P.L.1972, c. 42 (C.58:11-55).

58:10A-14.6. Advisory Committee on Water Supply and Wastewater Licensed Operator Training

There is established in the Department of Environmental Protection an Advisory Committee on Water Supply and Wastewater Licensed Operator

Training. Committee members shall be appointed by the commissioner for three-year terms as follows: four members who shall be representatives of the department; two members who shall be representatives selected from a list prepared by the New Jersey Section American Water Works Association; one member who shall be a licensed operator; two members of the Water Pollution Control Association; two members who shall be selected from a list prepared by the Authorities Association of New Jersey, one of whom shall be from a water authority, and one from a wastewater treatment authority; one member who shall be selected from a list prepared by the New Jersey Business and Industry Council; three members who shall be selected from a list prepared by educational institutions in the State conducting courses in water supply or wastewater treatment operations, or which conducted an appropriate course in the immediately preceding academic year, one of whom shall be the Director of the Office of Continuing Professional Education at Cook College, the State University of Rutgers; and two members who shall be selected from environmental groups in the State actively concerned or involved in water quality or wastewater treatment. Vacancies shall be filled in the same manner as the original appointment for the unexpired term.

The advisory committee shall meet at least once a year, and shall organize itself in such manner and hold its meetings in such places as it deems most suitable. The department shall provide staff assistance to the advisory committee, to the extent that monies are available therefor.

The advisory committee shall advise the department on the training and licensing of water supply and wastewater treatment operators and on related matters, or on any other matter referred to it by the department. The advisory committee shall review the training programs for, and identify the training needs of, water supply and wastewater treatment operators, and shall approve the annual allocations of monies for wastewater treatment operators' training programs from sums available in the "Wastewater Treatment Operators' Training Account," established pursuant to section 13 of P.L.1990, c. 28 (C.58:10A-14.5).

58:10A-15. Legislative findings

The Legislature finds that certain halogenated hydrocarbon chemicals and aromatic hydrocarbon chemicals used as sewage system cleaners are a significant and unnecessary source of water pollution and groundwater contamination. These chemicals are toxic and generally nonbiodegradable. When used to unblock sewage systems they are introduced into the groundwater where they have adverse effects on the health and environment of the citizens of this State. It is declared to be the policy of this State to eliminate the introduction of these toxic chemicals into the groundwaters of this State.

58:10A-16. Definitions

As used in this act:

a. "Sewage system cleaner" means any solid or liquid material intended or used primarily for the purpose of cleaning, treating, degreasing, unclogging, disinfecting or deodorizing any part of a sewage system but excluding those liquid or solid products intended or used primarily for manual cleaning, scouring, treating, deodorizing or disinfecting the surfaces of common plumbing fixtures.

b. "Sewage system" means any part of a wastewater disposal system, including but not limited to all toilets, piping, drains, sewers, septic tanks, distribution boxes, absorption fields, seepage pits, cesspools, and dry wells.

c. "Restricted chemical material" means any chemical material which contains concentrations in excess of one part per hundred, by weight of (1) any halogenated hydrocarbon chemical, aliphatic or aromatic, including but not limited to trichloroethane, trichloroethylene, tetrachloroethylene, methylene chloride, halogenated benzenes and carbon tetrachloride; (2) any aromatic hydrocarbon chemical, including but not limited to benzene, toluene, and naphthalene; (3) any phenol derivative in which a hydroxyl group and two or more halogen atoms are bonded directly to a six-carbon aromatic ring, including but not limited to trichlorophenol or pentachlorophenol; or (4) acrolein, acrylonitrile, or benzidine. Restricted chemical material does not, however, include any chemical material which is (1) biodegradable and (2) not a significant source, of contamination of the groundwaters of the State.

58:10A-17. Sewage system cleaner containing restricted chemical material; distribution or sale, or use, introduction or application; prohibition

a. No person shall distribute, sell, offer or expose for sale in this State any sewage system cleaner containing any restricted chemical material.

b. No person shall use, introduce or apply or cause any other person to use, introduce or apply in any sewage system, surface waters, or groundwaters, any sewage system cleaner containing any restricted chemical material.

58:10A-18. Regulations; identification and qualification of ingredients; information by manufacturers; deletion or addition to list of restricted chemical material

a. The commissioner shall, within 90 days of the effective date of this act, promulgate regulations establishing methods for identification and quantification of ingredients in sewage system cleaners containing any restricted chemical material.

b. The commissioner shall, within 180 days of the effective date of this act,

promulgate regulations requiring manufacturers of sewage system cleaners distributed, sold or offered for sale in this State to furnish to the commissioner any existing information regarding chemical components of such products, including the nature and extent of investigations and research performed by the manufacturer concerning the effects of such products on the quality of the groundwaters of the State, provided that, in lieu of furnishing this information, the manufacturers may refer the commissioner to any available information which has already been obtained by any Federal or State agency.

c. Whenever the commissioner finds, after investigation and public hearing, that any ingredient other than a restricted chemical material in a sewage system cleaner distributed, sold, offered or exposed for sale in this State is shown to be dangerous, deleterious or injurious to the public health in its impact on the quality of the groundwaters of the State, he shall prohibit or restrict the sale, distribution, offer or exposure for sale or use by any person of sewage system cleaners containing such ingredients.

d. Whenever the commissioner finds, after investigation and public hearing, that any restricted chemical material will not be dangerous, deleterious or injurious to the public health in its impact on the quality of the groundwaters of the State when used in a sewage system cleaner, he may authorize the use of such chemical material in such products.

58:10A-19. Confidentiality of information from manufacturer

The commissioner shall hold confidential any information obtained pursuant to subsection b. of section 4 of this act when shown by any manufacturer that the information, if made public, would divulge competitive business information, methods or processes entitled to protection as trade secrets of the manufacturer.

58:10A-20. Violations; penalties

Any person who violates any provision of this act or any rule or regulation promulgated hereunder shall be subject to the provisions of P.L.1977, c. 74, s. 10 (C. 58:10A-10).

58:10A-21. Underground storage tanks containing hazardous substances; legislative findings and declarations

The Legislature finds and declares that millions of gallons of gasoline and other hazardous substances are stored prior to use or disposal, in underground storage tanks; that a significant percentage of these underground storage tanks are leaking due to corrosion or structural defect; that this leakage of hazardous substances from underground storage tanks is among the most common causes of groundwater pollution in the State; and that it is thus necessary to provide for

the registration and the systematic testing and monitoring of underground storage tanks to detect leaks and discharges as early as possible and thus minimize further degradation of potable water supplies. The Legislature further finds and declares that with the enactment by the United States Congress of the "Hazardous and Solid Waste Amendments of 1984," Pub.L. 98-616 (42 U.S.C. s 6991) it is necessary to authorize the Department of Environmental Protection to adopt a regulatory program that permits the delegation of the authority to carry out the federal act, but also recognizes the need of this State to protect its natural resources in the manner consistent with well-established environmental principles.

58:10A-22. Definitions

As used in this act:

- a. "Commissioner" means the Commissioner of the Department of Environmental Protection;
- b. "Department" means the Department of Environmental Protection;
- c. "Discharge" means the intentional or unintentional release by any means of hazardous substances from an underground storage tank into the environment;
- d. "Facility" means one or more underground storage tanks;
- e. "Hazardous substances" means motor fuels and those elements and compounds, including petroleum products which are liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), which are defined as hazardous substances by the department after public hearing, and which shall be consistent to the maximum extent possible with and which shall include the list of hazardous wastes adopted by the United States Environmental Protection Agency pursuant to section 3001 of the "Resource Conservation and Recovery Act of 1976," Pub.L. 94-580 (42 U.S.C. s 6921), the list of hazardous substances adopted by the United States Environmental Protection Agency pursuant to section 311 of the "Federal Water Pollution Control Act Amendments of 1972," Pub.L. 92-500 (33 U.S.C. s 1321), the list of toxic pollutants designated by Congress or the Environmental Protection Agency pursuant to section 307 of that act (33 U.S.C. s 1317), and any substance defined as a hazardous substance pursuant to section 101(14) of the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," Pub.L. 96-510 (42 U.S.C. s 9601);
- f. "Leak" means the release of a hazardous substance from an underground storage tank into a space created by a method of secondary containment wherein it can be detected by visual inspection or a monitoring system before it enters the environment;

g. "Monitoring system" means a system capable of detecting leaks or discharges, or both, other than an inventory control system, used in conjunction with an underground storage tank, or a facility, conforming to criteria established pursuant to section 5 of this act;

h. "Nonoperational storage tank" means any underground storage tank in which hazardous substances are not contained, or from which hazardous substances are not dispensed;

i. "Operator" means any person in control of, or having responsibility for, the daily operation of a facility;

j. "Owner" means any person who owns a facility, or in the case of a nonoperational storage tank, the person who owned the nonoperational storage tank immediately prior to the discontinuation of its use;

k. "Person" means any individual, partnership, company, corporation, consortium, joint venture, commercial or any other legal entity, the State of New Jersey, or the United States Government;

l. "Residential building" means a single and multi-family dwelling, nursing home, trailer, condominium, boarding house, apartment house, or other structure designed primarily for use as a dwelling;

m. "Secondary containment" means an additional layer of impervious material creating a space wherein a leak of hazardous substances from an underground storage tank may be detected before it enters the environment;

n. "Substantially modify" means construction at, or restoration, refurbishment or renovation of, an existing facility which increases or decreases the in-place storage capacity of the facility or alters the physical configuration or impairs or affects the physical integrity of the facility or its monitoring systems;

o. "Test" or "testing" means the testing of underground storage tanks in accordance with standards adopted by the department;

p. "Underground storage tank" means any one or combination of tanks, including appurtenant pipes, lines, fixtures, and other related equipment, used to contain an accumulation of hazardous substances, the volume of which, including the volume of the appurtenant pipes, lines, fixtures and other related equipment, is 10% or more below the ground. "Underground storage tank" shall not include:

(1) Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(2) Tanks used to store heating oil for on-site consumption in a

nonresidential building with a capacity of 2,000 gallons or less;

(3) Tanks used to store heating oil for on-site consumption in a residential building;

(4) Septic tanks installed in compliance with regulations adopted by the department pursuant to "The Realty Improvement Sewerage and Facilities Act (1954)," P.L.1954, c. 199 (C.58:11-23 et seq.);

(5) Pipelines, including gathering lines, regulated under the "Natural Gas Pipeline Safety Act of 1968," Pub.L. 90-481 (49 U.S.C. s 1671 et seq.), the "Hazardous Liquid Pipeline Safety Act of 1979," Pub.L. 96-129 (49 U.S.C. s 2001 et seq.), or intrastate pipelines regulated under State law;

(6) Surface impoundments, pits, ponds, or lagoons, operated in compliance with regulations adopted by the department pursuant to the "Water Pollution Control Act," P.L.1977, c. 74 (C.58:10A-1 et seq.);

(7) Storm water or wastewater collection systems operated in compliance with regulations adopted by the department pursuant to the "Water Pollution Control Act";

(8) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations;

(9) Tanks situated in an underground area, including, but not limited to, basements, cellars, mines, drift shafts, or tunnels, if the storage tank is situated upon or above the surface of the floor, or storage tanks located below the surface of the ground which are equipped with secondary containment and are uncovered so as to allow visual inspection of the exterior of the tank; and

(10) Any pipes, lines, fixtures, or other equipment connected to any tank exempted from the provisions of this act pursuant to paragraphs (1) through (9) of this subsection.

q. "Wellhead protection area" means an aquifer area described in a plan view around a well, from within which ground water flows to the well and through which ground water pollution, if it occurs, may pose a significant threat to the water quality of the well. The wellhead protection area is delimited by the use of time-of-travel and hydrologic boundaries.

58:10A-23. Registration of facilities; rules and regulations

a. The owner or operator of a facility shall, within 180 days of the effective date of this act, on forms and in a manner prescribed by the commissioner, register that facility with the department. The department may extend the registration period for an additional 180 days.

b. The commissioner shall, within 120 days of the effective date of this act and pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.), adopt rules and regulations to provide for the registration of all facilities in the State, prescribing the forms and procedures therefor.

This registration shall require the following:

- (1) The name and address of the owner and operator of the facility;
- (2) A site plan of the facility indicating the number and location of the underground storage tanks;
- (3) The date of installation of each of the underground storage tanks;
- (4) Any other relevant information requested by the commissioner.

These rules and regulations shall provide for the periodic, but in no case more frequent than annual, certification by the owner or operator of the facility that the information contained on the registration remains unchanged. The owner or operator of a facility shall, within 30 days of completing the activities for which a permit was acquired pursuant to section 4 of this act, register or reregister, as the case may be, in accordance with the provisions of this section.

58:10A-24. Permit to replace, install, expand, or modify facility; conditions for issuance

An owner or operator of a facility proposing to replace, install, expand or substantially modify the facility shall obtain a permit therefor from the commissioner. The commissioner shall not issue a permit unless the owner or operator demonstrates that:

- a. The facility is constructed of materials that meet or exceed the standards contained in, and is installed in a manner consistent with, the State Uniform Construction Code adopted pursuant to the "State Uniform Construction Code Act," P.L.1975, c. 217 (C. 52:27D-119 et seq.) and with the rules and regulations adopted pursuant to this act;
- b. The facility is equipped with either an approved method of secondary containment or a monitoring system;
- c. The facility utilizes corrosion control features necessary to protect the structural integrity of underground storage tanks susceptible to corrosion.

58:10A-24.1. Persons performing tank services on underground storage tanks to comply with s 58:10A-21 et seq.

a. Except as provided in subsection b. of this section, a person shall not perform, except in accordance with the provisions of this act, tank services on an underground storage tank at an underground storage tank site required for purposes of complying with the provisions of P.L.1986, c. 102 (C.58:10A-21 et seq.), including, but not limited to, tank testing, tank installation, tank removal, tank repair, installation of monitoring systems, and subsurface evaluations for corrective action, closure, and corrosivity.

b. Subsection a. of this section shall not apply to a person performing tank closure on an underground storage tank located on a farm. A person performing tank closure on an underground storage tank located on a farm shall comply with the guidelines and the criteria established pursuant to subsection c. of this section. For the purposes of this section, "farm" shall mean land that qualifies for a special tax assessment pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c. 48 (C.54:4-23.1 et seq.), or any land less than five acres in area that would otherwise qualify for that farmland assessment and that has produced agricultural or horticultural products with a wholesale value of \$10,000 or more annually for at least the two successive years immediately preceding the year in which the tank removal is performed.

c. Within 90 days of the effective date of P.L.1997, c. 430, the department shall implement guidelines establishing a protocol for the performance of tank closures on a farm. Within 18 months of the effective date of P.L.1997, c. 430, the Department of Environmental Protection, in consultation with the Department of Agriculture and the State Soil Conservation Committee, shall, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), adopt criteria for the performance of tank closures on farms. Both the guidelines and the criteria shall be developed with the objectives of reducing the cost and increasing the efficiency of the process of tank closure while also ensuring environmental protection and public safety.

58:10A-24.2. Certification of businesses or persons qualified to perform services on underground storage tanks required; exemptions

a. A business firm shall not engage in the business of performing services on underground storage tanks at underground storage tank sites for purposes of complying with the requirements of P.L.1986, c. 102 (C.58:10A-21 et seq.) unless the business firm has been certified in accordance with section 3 of P.L.1991, c. 123 (C.58:10A-24.3), by certification of the owner, or, in the case of partnership, a partner in the firm, or, in the case of a corporation, an executive officer of the corporation.

b. Except as provided pursuant to subsection b. of section 1 of P.L.1991, c. 123 (C. 58:10A-24.1), any service performed on an underground storage tank at an underground storage tank site for the purpose of complying with the provisions of P.L.1986, c. 102 (C.58:10A-21 et seq.), shall be performed by, or

under the immediate on-site supervision of, a person certified by the department in accordance with section 3 of P.L.1991, c. 123 (C.58:10A-24.3).

c. A business firm or other person performing well drilling or pump installation services at the site of an underground storage tank who is licensed to perform such services pursuant to section 7 of P.L.1947, c. 377 (C.58:4A-11), shall not be required to be certified pursuant to section 3 of P.L.1991, c. 123 (C.58:10A-24.3), or to perform those services under the supervision of a person certified thereunder.

d. Professional engineers licensed pursuant to P.L.1938, c. 342 (C.45:8-27 et seq.) shall be exempt from the certification requirements of section 3 of P.L.1991, c. 123 (C.58:10A-24.3) and from the payment of a recertification or renewal fee required pursuant to section 4 of that act (C.58:10A-24.4), but shall be required to obtain a certification card issued by the department at no charge and to make the card available for inspection by a State or local official when performing tank services on an underground storage tank at an underground storage tank site. Professional engineers exempt pursuant to this subsection shall be required to attend a department approved training course on the department's rules and regulations concerning underground storage tanks within one year of certification or recertification.

e. A plumbing contractor, as defined pursuant to section 2 of P.L.1968, c. 362 (C.45:14C-2), engaged in the installation, repair, testing, or closure of a waste oil underground storage tank shall be exempt from the certification requirements of section 3 of P.L.1991, c. 123 (C.58:10A-24.3) and from payment of a recertification or renewal fee required pursuant to section 4 of that act (C.58:10A-24.4), but shall be required to obtain a certification card issued by the department at no charge and to make the card available for inspection by a State or local official when performing tank services on an underground storage tank. Plumbing contractors exempt pursuant to this subsection shall be required to attend a department approved training course on the department's rules and regulations concerning underground storage tanks within one year of certification or recertification. A plumbing contractor engaged in the installation, repair, testing, or closure of an underground storage tank that is not a waste oil tank shall be required to comply with section 3 of P.L.1991, c. 123 (C.58:10A-24.3).

58:10A-24.3. Examination; application; fee; certification without examination

a. The department shall establish and conduct examinations for certifying that a person is qualified to perform services on underground storage tanks at underground storage tank sites for purposes of complying with the provisions of P.L.1986, c. 102 (C. 58:10A-21 et seq.). Application to the department for examination for certification shall be made in a manner and on such forms as may be prescribed by the department. The department may prescribe training or

continuing education, experience or other requirements as a condition for taking a certification examination, or for recertification. The filing of an application shall be accompanied by a nonrecoverable application fee of \$35.00 to cover the costs of processing the application and conducting examinations. No person shall be certified by the department unless he or she satisfactorily completes the examination and satisfies any other requirements of this act, or of the department adopted pursuant thereto.

b. Notwithstanding the provisions of subsection a. of this section, any person who files, within 300 days of the effective date of this act, an application for certification under this subsection, and demonstrates to the department that he or she has adequately performed services on underground storage tanks at underground storage tank sites for at least five consecutive years immediately preceding the filing of the application, shall be certified without examination upon payment of an application and certification fee. Within one year of certification, a person certified pursuant to this subsection shall submit to the department evidence of attendance at a department approved training course on the department's rules and regulations concerning underground storage tanks. One year from the effective date of this act, no person applying for certification pursuant to this subsection shall perform services requiring certification until certified by the department.

c. A person certified pursuant to subsection b. of this section shall comply with the examination and other requirements adopted by the department pursuant to subsection a. of this section as a precondition for filing for a renewal of a certification issued pursuant to subsection b. of this section.

d. The department may establish a general certification for tank services and on-site supervisory responsibilities, and such other classes of certification for particular tank services or for on-site supervisory responsibilities as it deems appropriate, and may establish separate training, examination and working experience requirements therefor.

58:10A-24.4. Duration of certification; renewal; attendance at approved training course; fees; evidence of financial responsibility; display of certification

a. Certification shall be for a three-year period. Renewal of a certification, or recertification, shall be made to the department at least 60 days prior to the expiration date of the certification, and shall be accompanied by evidence of attendance at a department approved training course, within the preceding 12 months, on the department's rules and regulations concerning underground storage tanks. Certification shall not be transferable. No certification or recertification shall be issued until a certification fee of \$250.00 has been paid in full to the department. Application and certification fees shall be in an amount sufficient to cover the costs to the department of administering and enforcing the provisions of this act and may be adjusted by the department through the

adoption of rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.). A person shall have 90 days from the expiration date of a certification to renew an expired certification, after which date the person shall be required to apply for a new certification. The 90-day grace period shall not entitle a person to perform any services for which certification is required.

b. As a condition of certification or recertification, a business firm shall be required to provide the department with evidence of financial responsibility for the performance of services provided pursuant to P.L.1986, c. 102 (C. 58:10A-21 et seq.) and for the cleanup or mitigation of a hazardous substance discharge resulting from the performance of such services. Financial responsibility shall be in an amount to be determined by the department but in no case less than \$250,000. Financial responsibility may be in the form of insurance, a surety bond, letter of credit, or other security posted with the department, or self-insurance, as may be prescribed by the department. If the financial responsibility is in the form of insurance, a surety bond, or similar device, the business firm shall promptly notify the department of any cancellation or change in coverage. Financial responsibility in the amount and form required by the department shall be maintained for the term of certification by the business firm.

A copy of the certification shall be conspicuously displayed for public review in the business office of a firm engaged in providing services for underground storage tanks at underground storage tank sites. If a firm maintains a business office at more than one location, the certification shall be conspicuously displayed at each location.

58:10A-24.5. Revocation, suspension, denial, or refusal to renew license; violations

a. The department may deny, suspend, revoke, or refuse to renew a certification for good cause, including:

(1) a violation, or abetting another to commit a violation, of any provision of this act, or of P.L.1986, c. 102 (C. 58:10A-21 et seq.), or rule or regulation adopted, or order issued under either act;

(2) making a false statement on an application for certification or other information required by the department pursuant to this act, or P.L.1986, c. 102;

(3) misrepresentation or the use of fraud in obtaining certification or performing underground storage tank services.

b. Before suspending, revoking, or refusing to renew a certification, the department shall afford the applicant or certificate holder an opportunity to be heard in accordance with the provisions of the "Administrative Procedure Act,"

P.L.1968, c. 410 (C. 52:14B-1 et seq.).

c. Suspension, revocation, or refusal to renew a certification shall not bar the department from pursuing against the applicant or certificate holder any other lawful remedy available to the department.

d. Any business firm or person whose certification is revoked shall be ineligible to apply for certification for three years from the date of the revocation.

e. If the department has reason to believe that a condition exists that poses an imminent threat to the public health, safety or welfare, it may order the certificate holder to cease operations pending the outcome of the hearing.

58:10A-24.6. Penalties; injunctive relief; civil administrative penalties; notification of violator

a. If a person violates any of the provisions of this act, or any rule or regulation adopted, or order issued, thereunder, the department may institute a civil action in a court of competent jurisdiction for injunctive or other appropriate relief to prohibit and prevent the violation, and the court may proceed in the action in a summary manner.

b. Any person who violates the provisions of this act, or any rule or regulation adopted, or order issued, hereunder, is liable to a civil administrative penalty of not more than \$5,000 for the first offense, not more than \$10,000 for the second offense, and \$25,000 for the third and each subsequent offense. If the violation is of a continuing nature, each day of violation subsequent to receipt of an order to cease the violation constitutes an additional, separate and distinct offense. No civil administrative penalty shall be levied except subsequent to the notification of the violator by certified mail or personal service.

The notice shall include a reference to the section of the statute, regulation, order or permit condition violated; a concise statement of the facts alleged to constitute the violation; a statement of the amount of the civil penalty to be imposed; and a statement of the violator's right to a hearing. The violator shall have 20 days from receipt of notice within which to deliver to the department a written request for a hearing. Subsequent to the hearing and upon a finding that a violation has occurred, the department may issue a final order assessing the amount of the penalty. If no hearing is requested, the notice shall become a final order upon the expiration of the 20-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Agreement to, or payment of a civil administrative penalty shall not be deemed to affect the availability of any other enforcement provision in connection with the violation for which the penalty is levied.

c. Any person who violates the provisions of this act is liable to a civil penalty of not more than \$5,000 for the first offense, not more than \$10,000 for the second offense, and \$25,000 for the third and each subsequent offense.

Any person violating an administrative order issued pursuant to subsection b. of this section, or a court order issued pursuant to subsection a. of this section, or who fails to pay a civil administrative penalty when due and owing as provided in subsection b. of this section, is subject to a civil penalty not to exceed \$25,000 per day of the violation. Each day's continuance of a violation constitutes a separate and distinct violation. Any penalty imposed under this subsection may be recovered with costs in a summary proceeding pursuant to "the penalty enforcement law" (N.J.S. 2A:58-1 et seq.). The Law Division of the Superior Court shall have jurisdiction to enforce "the penalty enforcement law."

d. The department may compromise and settle any claim for a penalty under this section in such amount as the department may determine to be appropriate and equitable under all of the circumstances.

e. Any person who fails to contest or to pay, in whole or in part, a penalty imposed pursuant to this section, or who fails to agree to a payment schedule therefor, within 30 days of the date that the penalty is due and owing, shall be subject to an interest charge on the amount of the penalty from the date that the amount was due and owing. The rate of interest shall be that established by the New Jersey Supreme Court for interest rates on judgments, as set forth in the Rules Governing the Courts of the State of New Jersey.

f. The penalty provisions of this section shall be in addition to such penalties as may be assessable pursuant to section 12 of P.L.1986, c. 102 (C. 58:10A-32) for violations of that act.

g. All penalties, monies, and any interest thereon, assessed and collected pursuant to this section shall be deposited into the "New Jersey Spill Compensation Fund," established pursuant to section 10 of P.L.1976, c. 141 (C.58:10-23.11i) for use for any of the authorized purposes of the fund. The provisions of this subsection shall not apply to penalties assessed and collected pursuant to section 12 of P.L.1986, c. 102 (C.58:10A-32).

58:10A-25. Rules and regulations; adoption; contents; considerations; use of recommendations and standard procedures; adoption in the State Uniform Construction Code

a. The commissioner shall, within one year of the effective date of P.L.1986, c. 102 (C.58:10A-21 et seq.), adopt, pursuant to the "Administrative Procedure Act," rules and regulations which:

(1) Establish a schedule for the testing of all facilities, taking into account the age of the underground storage tank, the hazardous substance stored therein, the proximity of the underground storage tank to potable water supplies, and the soil resistivity and other corrosive conditions which may precipitate a discharge, and for the periodic testing for structural integrity of facilities utilizing secondary containment which do not incorporate a monitoring system, and the reporting of

results thereof to the department;

(2) Establish standards for the construction, installation, and operation of new and existing underground storage tanks, including standards for secondary containment, monitoring systems, release detection systems, corrosion protection, spill prevention, and overfill prevention, and other underground storage tank equipment. The standards adopted pursuant to this paragraph shall be substantially identical to the relevant standards adopted by the United States Environmental Protection Agency pursuant to 42 U.S.C. s 6991 et seq. for the regulation of underground storage tanks. The standards adopted by the department for any underground storage tank not regulated pursuant to 42 U.S.C. s 6991 et seq. shall not be more stringent than the standards adopted by the United States Environmental Protection Agency for underground storage tanks regulated pursuant to 42 U.S.C. s 6991 et seq. Notwithstanding any other provision in this paragraph to the contrary, standards adopted by the department for any underground storage tank located in a wellhead protection area may be more stringent than the standards adopted by the United States Environmental Protection Agency for underground storage tanks pursuant to 42 U.S.C. s 6991 et seq.;

(3) (Deleted by amendment, P.L.1994, c. 14.)

(4) Require the maintaining of records of any monitoring or leak detection system, inventory control system or underground storage tank testing system;

(5) Require the reporting of any discharges and the corrective action taken in response to a discharge from an underground storage tank;

(6) Require the taking of corrective action in response to a discharge from an underground storage tank by the owner or operator of the underground storage tank;

(7) Require the owner or operator of an underground storage tank to prepare plans for the closure of an underground storage tank to prevent the future discharge of hazardous substances into the environment;

(8) Require the maintaining of evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by a discharge; and

(9) (Deleted by amendment, P.L.1994, c. 14).

(10) Require the notification of the department and local agencies of the existence of any operational or nonoperational underground storage tanks.

b. In developing the regulations required pursuant to this section the department shall consider the regulations concerning underground storage tanks adopted by the United States Environmental Protection Agency pursuant to the

"Hazardous and Solid Waste Amendments of 1984," Pub.L. 98-616 (42 U.S.C. s 6991 et al.) and shall use the recommendations and standard procedures of the following organizations:

(1) American Petroleum Institute (API), 1220 L Street, N.W., Washington, D.C. 20005;

(2) American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103;

(3) NACE International, P.O. Box 218340, Houston, Texas 77218;

(4) National Fire Protection Association (NFPA), 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269; and

(5) Underwriters Laboratories (UL), 333 Pfingston Road, Northbrook, Illinois 60062.

c. The Department of Community Affairs shall adopt in the State Uniform Construction Code the rules and regulations adopted by the department pursuant to this section within 60 days.

58:10A-26. Monitoring systems

Monitoring systems shall be installed, maintained, and operated in accordance with the manufacturer's requirements. Each monitoring system shall be inspected at least monthly to determine that it is functionally unimpaired.

58:10A-27. Inventory records

The owner or operator of a facility shall maintain inventory records for each underground storage tank which shall, at a minimum, record daily hazardous substance transfers and a periodic average. These records shall be maintained at the site of the facility for at least one year.

58:10A-28. Unaccountable losses; notice; inspection; actions by commissioner based on findings; responsibility for costs

a. If the inventory records maintained pursuant to section 7 of this act or a monitoring system indicates a leak or discharge, the owner or operator of the facility shall, within 24 hours of discovery, notify the department and the appropriate local health agencies of the leak or discharge.

b. Upon notification, the department shall promptly conduct an inspection to determine the extent and impacts of the leak or discharge.

c. Upon a finding that the leak or discharge is not an imminent threat to the proximate groundwater resources or public health or safety, the commissioner shall order the owner of the underground storage tank to remove, replace, or repair the underground storage tank, establish a date by which the removal, replacement, or repair shall be effected, and take any other action, or require the owner of the tank to take any action, necessary to abate, contain, clean up, or remove, or any combination thereof, the leak or discharge.

d. Upon a finding that the leak or discharge has entered or threatens groundwater resources or public health or safety, the commissioner shall order the immediate removal of the contents of the underground storage tank, and shall take, or require the owner of the underground storage tank to take, all other appropriate actions necessary to abate, contain, clean up, or remove, or any combination thereof, the discharge.

e. If the commissioner provides for the removal, replacement or repair of an underground storage tank by any person other than the owner, or takes other appropriate actions necessary to mitigate the adverse effects of a leak or discharge, the costs of these measures shall be borne by the owner of the underground storage tank.

58:10A-29. Rules and regulations; standards for construction, installation and operation of new and existing underground storage tanks; deadlines for compliance

a. The department shall adopt rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (52:14B-1 et seq.), requiring the owner or operator of a facility to meet the standards for the construction, installation, and operation of new and existing underground storage tanks, including standards for secondary containment, monitoring systems, release detection systems, corrosion protection, spill prevention, and overfill prevention, and other underground storage tank equipment adopted pursuant to paragraph (2) of subsection a. of section 5 of P.L.1986, c. 102 (C.58:10A-25). The deadlines for compliance with the standards shall be identical to those deadlines established by the United States Environmental Protection Agency pursuant to 42 U.S.C. s.6991 et seq. for all underground storage tanks, including those underground storage tanks not regulated pursuant to 42 U.S.C. s.6991 et seq.

b. Notwithstanding the provisions of subsection a. of this section to the contrary, and except as provided in section 2 of P.L.1998, c. 59 (C.58:10A-29.1), the deadline for compliance for underground storage tanks with a capacity of over 2,000 gallons used to store heating oil for onsite consumption in a non-residential building shall be five years after the deadline established pursuant to subsection a. of this section.

58:10A-29.1. Underground storage tanks over 2,000 gallons, non-residential buildings; testing and notification requirements

The owner or operator of any underground storage tank with a capacity of over 2,000 gallons used to store heating oil for onsite consumption in a non-residential building who does not meet the deadline for compliance pursuant to subsection a. of section 9 of P.L.1986, c. 102 (C.58:10A-29), shall, no later than December 22, 1998, enter into a contract for the provision of leak detection testing on the underground storage tank using a method that is accepted by the Department of Environmental Protection, which testing shall be performed no later than August 31, 1999 and at least once every 36 months thereafter. The owner or operator of the underground storage tank shall provide a copy of the contract to the Department of Environmental Protection by December 22, 1998 and shall notify the department of the results of the test within 15 days of its performance. If an owner or operator of an underground storage tank fails to comply with the testing and notification requirements specified in this section, then the deadline for compliance shall not be extended as provided in subsection b. of section 9 of P.L. 1986, c. 102 (C.58:10A-29) and the owner or operator who fails to comply with the deadlines established in subsection a. of section 9 of P.L. 1986, c. 102 shall be subject to the penalties as provided in section 10 of P.L.1977, c. 74 (C.58:10A-10).

58:10A-30. Departmental authority to enter, inspect, photograph, obtain samples or evidence of discharge, or conduct monitoring or testing; cooperation of owner or operator

The department shall have the authority to enter, at reasonable hours, any property or place of business where underground storage tanks or nonoperational storage tanks are or may be located to inspect any underground storage tank or nonoperational storage tank, and to photograph any records related to the operation of an underground storage tank or a nonoperational storage tank; to obtain samples or evidence of a discharge from any underground storage tank or nonoperational storage tank, or from the surrounding air, soil, or surface or groundwater; and to conduct monitoring or testing of any underground storage tank or nonoperational storage tank or the surrounding air, soil or surface or groundwater. The owner or operator of a facility or a nonoperational storage tank shall allow and cooperate with any action taken by the department pursuant to the provisions of this section.

58:10A-31. Additional rules and regulations; registration fees

The commissioner may adopt, pursuant to the "Administrative Procedure Act," any rules and regulations in addition to those required pursuant to this act, necessary to carry out the provisions of this act, including rules and

regulations imposing fees for the processing of initial registrations pursuant to section 3 of this act and for any renewal thereof, and for processing permits required pursuant to section 4 of this act.

Registration fees shall be established for subsequent registrations and shall not exceed the estimated yearly cost of implementing the provisions of this act. The commissioner may consider the size, contents and the location of the underground storage tanks in establishing these fees. The fee that may be imposed upon the owner or operator of a facility which comprises only two or more tanks used to store heating oil for on-site consumption in a residential building, where no individual tank has a capacity of more than 2,000 gallons, may not exceed \$100 for that facility for an initial registration or a renewal thereof. These fees shall be deposited in the General Fund. The Legislature shall annually appropriate to the department an amount equivalent to the amount anticipated to be collected as fees charged under this section for the purposes of administering the provisions of this act.

58:10A-32. Penalties for violations

A person violating the provisions of this act is liable to the penalties prescribed in section 10 of P.L.1977, c. 74 (C. 58:10A-10).

58:10A-33. Owner or operator of facility equipped with monitoring system who has obtained permit for groundwater discharges; exemption from requirement of being equipped with method of secondary containment or monitoring system

The owner or operator of a facility equipped with a monitoring system who has obtained a permit for groundwater discharges pursuant to section 6 of P.L.1977, c. 74 (C. 58:10A-6) is exempt from the requirements of section 9 of this act.

58:10A-34. Departmental authority under other laws; effect of act

Nothing in this act shall be construed to limit the department's authority to respond to, or remove or clean up, a discharge pursuant to the provisions of any other State or federal law.

58:10A-35. Exclusive program regulating underground storage tanks; nonpreemption of more stringent municipal ordinances where warranted; modification of rules; petition by local government unit

a. It is the intent of the Legislature that the program established by this act

for the regulation of underground storage tanks constitute the only program regulating underground storage tanks in this State. To this end no municipality, county, or political subdivision thereof shall enact any law or ordinance regulating underground storage tanks, and, further, the enactment of this act shall supersede any law or ordinance regulating underground storage tanks enacted by a municipality, county or political subdivision thereof prior to the enactment of this act.

b. However, the department shall develop criteria for determining in which case a municipal ordinance more stringent than the provisions of this act is warranted. If the conditions in the municipality are deemed to meet the criteria developed pursuant to this subsection, the ordinance is hereby deemed to be effective and not preempted and the municipality may enforce and administer its provisions. The department shall have 180 days to determine whether an ordinance meets the criteria developed pursuant to this section.

c. Any municipality, county or political subdivision may petition the department for a modification of any rule adopted under this act. The petition shall be forwarded to the department together with a written statement setting forth all provisions of the municipal ordinance which differ from the criteria identified, the reasons for the differences, and all supporting facts and data. The department shall evaluate the petition using the criteria adopted under subsection b. of this section and accept or reject the petition in a written statement which shall include the basis for the department's determination.

When the department determines that a rule change is justified it shall evaluate the applicability of that rule change on a regional or areawide basis and modify the rules to provide areawide requirements as appropriate.

58:10A-36, 58:10A-37. Repealed by L.1997, c.235, s 23, eff. Aug. 30, 1997

58:10A-37.1. Short title; Underground Storage Tank Finance Act

This act shall be known and may be cited as the "Underground Storage Tank Finance Act."

58:10A-37.2. Definitions relating to underground storage tank financing

As used in this act:

"Applicant" means a person who files an application for financial assistance from the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund for payment of eligible project costs of a remediation due to a discharge of petroleum from a petroleum underground storage tank and for

payment of eligible project costs of an upgrade or closure of a regulated tank;

"Authority" means the New Jersey Economic Development Authority established pursuant to P.L.1974, c. 80 (C.34:1B-1 et seq.);

"Closure" means the proper closure or removal of a petroleum underground storage tank necessary to meet all regulatory requirements of federal, State, or local law;

"Commissioner" means the Commissioner of Environmental Protection;

"Department" means the Department of Environmental Protection;

"Discharge" means the intentional or unintentional release by any means of petroleum from a petroleum underground storage tank into the environment;

"Eligible owner or operator" means (1) any owner or operator other than the owner or operator of a petroleum underground storage tank storing heating oil for onsite consumption in a residential building who owns or operates less than 10 petroleum underground storage tanks in New Jersey, who has a net worth of less than \$2,000,000 and who demonstrates to the satisfaction of the authority, the inability to qualify for and obtain a commercial loan for all or part of the eligible project costs, (2) the owner or operator of a petroleum underground storage tank storing heating oil for onsite consumption in a residential building, or (3) a public entity who owns or operates a petroleum underground storage tank in New Jersey;

"Eligible project costs" means the reasonable costs for equipment, work or services required to effectuate a remediation, an upgrade, or a closure which equipment, work or services are eligible for payment from the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund. In the case of an upgrade or closure of a regulated tank, eligible project costs shall be limited to the cost of the minimal effective system necessary to meet all the regulatory requirements of federal and State law. The limitation of eligible project costs to the minimal effective system shall not be construed to deem ineligible those project costs expended to replace a regulated tank rather than to improve the regulated tank. An owner or operator may perform an upgrade or a closure beyond the minimal effective system in which case the eligible project costs that may be awarded from the fund as financial assistance shall be that amount that would represent the cost of a minimal effective system. In the case of a remediation, eligible project costs shall not include the cost to remediate a site to meet residential soil remediation standards if the local zoning ordinances adopted pursuant to the "Municipal Land Use Law," P.L.1975, c. 291 (C.40:55D-1 et seq.) does not allow for residential use. Eligible project costs shall include the cost of a preliminary assessment and site investigation, even if performed prior to the award of financial assistance from the fund if the preliminary assessment and site investigation were performed after the effective date of P.L.1997, c.235. Eligible project costs shall not include the costs of any

remediation performed at a site where the petroleum underground storage tank was removed prior to December 1, 1996;

"Facility" means one or more operational or nonoperational petroleum underground storage tanks under single ownership at a common site;

"Financial assistance" means a grant or loan or a combination of both that may be awarded by the authority from the fund to an eligible owner or operator as provided in section 5 of P.L.1997, c.235 (C.58:10A-37.5);

"Operator" means any person in control of, or having responsibility for, the daily operation of a facility;

"Owner" means any person who owns a facility;

"Person" means any individual, partnership, corporation, society, association, consortium, joint venture, commercial entity, or public entity, but does not include the State or any of its departments, agencies or authorities;

"Petroleum" means all hydrocarbons which are liquid at one atmosphere pressure (760 millimeters or 29.92 inches Hg) and temperatures between -20°F and 120°F (-29°C and 49°C), and all hydrocarbons which are discharged in a liquid state at or nearly at atmospheric pressure at temperatures in excess of 120°F (49°C) including, but not limited to, gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other wastes, crude oil, and purified hydrocarbons that have been refined, re-refined, or otherwise processed for the purpose of being burned as a fuel to produce heat or usable energy or which is suitable for use as a motor fuel or lubricant in the operation or maintenance of an engine;

"Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund" or "fund" means the fund established pursuant to section 3 of P.L.1997, c.235 (C.58:10A-37.3);

"Petroleum underground storage tank" means a tank of any size, including appurtenant pipes, lines, fixtures, and other related equipment, that normally and primarily stores petroleum, the volume of which, including the volume of the appurtenant pipes, lines, fixtures and other related equipment, is 10% or more below the ground. "Petroleum underground storage tank" does not include:

(1) Septic tanks installed or regulated pursuant to regulations adopted by the department pursuant to "The Realty Improvement Sewerage and Facilities Act (1954)," P.L.1954, c. 199 (C.58:11-23 et seq.) or the "Water Pollution Control Act," P.L.1977, c. 74 (C.58:10A-1 et seq.);

(2) Pipelines, including gathering lines, regulated under 49 U.S.C. s 60101 et seq., or intrastate pipelines regulated under State law;

(3) Surface impoundments, pits, ponds, or lagoons, operated in or regulated pursuant to regulations adopted by the department pursuant to the "Water Pollution Control Act," P.L.1977, c. 74 (C.58:10A-1 et seq.);

(4) Storm water or wastewater collection systems operated or regulated pursuant to regulations adopted by the department pursuant to the "Water Pollution Control Act";

(5) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations;

(6) Tanks situated in an underground area, including, but not limited to, basements, cellars, mines, drift shafts, or tunnels, if the storage tank is situated upon or above the surface of the floor, or storage tanks located below the surface of the ground which are equipped with secondary containment and are uncovered so as to allow visual inspection of the exterior of the tank; and

(7) Any pipes, lines, fixtures, or other equipment connected to any tank exempted from the provisions of this definition pursuant to paragraphs (1) through (6) above;

"Public entity" means any county, municipality, or public school district, but shall not include any authority created by those entities;

"Regulated tank" means a petroleum underground storage tank that is required to be upgraded pursuant to P.L.1986, c. 102 (C.58:10A-21 et seq.) or 42 U.S.C. s 6991 et seq.;

"Remediation" means all necessary actions to investigate and clean up any known, suspected, or threatened discharge of petroleum, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action, as those terms are defined in section 23 of P.L.1993, c. 139 (C.58:10B-1);

"Upgrade" means the replacement of a regulated tank, the installation of secondary containment, monitoring systems, release detection systems, corrosion protection, spill prevention, or overfill prevention therefor, or any other necessary improvement to the regulated tank in order to meet the standards for regulated tanks adopted pursuant to section 5 of P.L.1986, c. 102 (C.58:10A-25) and 42 U.S.C. s 6991 et seq.

58:10A-37.3. Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund established

a. The Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund is established in the authority as a special, revolving fund. The fund shall be administered by the authority and shall be credited with:

- (1) such monies as are appropriated by the Legislature;
 - (2) sums received as repayment of principal and interest on outstanding loans made from the State Underground Storage Tank Improvement Fund established pursuant to P.L.1986, c. 102 (C.58:10A-21 et seq.);
 - (3) such monies as are appropriated pursuant to section 21 of P.L.1997, c.235 (C.58:10A-37.21);
 - (4) all non-refundable application fees collected pursuant to section 6 of P.L.1997, c.235 (C.58:10A-37.6);
 - (5) sums received as repayment of principal and interest on outstanding loans made from the fund;
 - (6) any monies recovered by the authority pursuant to sections 14 and 15 of P.L.1997, c.235 (C.58:10A-37.14 and 58:10A-37.15);
 - (7) any return on investment of monies deposited in the fund;
 - (8) any monies recovered through liens pursuant to section 10 or 16 of P.L.1997, c.235 (C.58:10A-37.10, 58:10A-37.16); and
 - (9) payments of the annual surcharge imposed pursuant to section 18 of P.L.1997, c.235 (C.58:10A-37.18).
- b. Monies in the fund shall be used by the authority solely for providing financial assistance pursuant to section 4 of P.L.1997, c.235 (C.58:10A-37.4) except that the authority may use any return on investment of monies deposited in the fund, application fees collected pursuant to section 6 of P.L.1997, c.235 (C.58:10A-37.6), monies recovered by the authority pursuant to sections 14 and 15 of P.L.1997, c.235 (C.58:10A-37.14, 58:10A-37.15), and payments of the annual surcharge imposed pursuant to section 18 of P.L.1997, c.235 (C.58:10A-37.18) for actual costs incurred in administering the fund, and for costs of any action to recover monies owing to the fund.

58:10A-37.4. Use of monies in fund; application and approval of awards; priority rankings

a. Monies in the fund shall be allocated and used to provide financial assistance only to (1) eligible owners or operators of regulated tanks in this State in order to finance the eligible project costs of the upgrade or closure of those regulated tanks as may be required pursuant to 42 U.S.C. s 6991 et seq. or P.L.1986, c. 102 (C.58:10A-21 et seq.); and (2) eligible owners and operators of petroleum underground storage tanks in this State in order to finance the eligible project costs of remediations that are necessary due to the

discharge of petroleum from one or more of those petroleum underground storage tanks. Priority for the issuance of financial assistance from the fund, and the terms and conditions of that financial assistance, shall be based upon the criteria set forth in this section.

b. Upon a determination that an application for financial assistance meets all established criteria for the award of financial assistance from the fund, the authority shall approve the application. Prior to December 22, 1998, the authority may approve only those applications given priority pursuant to paragraphs (1) and (2) of this subsection or pursuant to subsections c. and f. of this section, but the authority may receive, file, and deem complete any application for financial assistance it receives prior to that date.

Upon the authority's approval of an application for financial assistance, the authority shall award financial assistance to an applicant upon the availability of sufficient monies in the fund. When monies in the fund are not sufficient at any point in time to fully fund all applications for financial assistance that have been approved by the authority, the authority shall award financial assistance to approved applicants, notwithstanding the date of approval of the application, in the following order of priority:

(1) Upgrades of regulated tanks required to be upgraded pursuant to 42 U.S.C. s 6991 et seq., and including any necessary remediation at the site of the regulated tank, shall be given first priority;

(2) Closure of any regulated tank required to be upgraded pursuant to 42 U.S.C. s 6991 et seq., and including any necessary remediation at the site of the regulated tank, shall be given second priority;

(3) Upgrades of regulated tanks required to be upgraded pursuant to P.L.1986, c. 102 (C.58:10A-21 et seq.), but not pursuant to 42 U.S.C. s 6991 et seq., and including any necessary remediation at the site of the regulated tank, shall be given third priority;

(4) Any necessary remediations at the sites of petroleum underground storage tanks other than those given priority pursuant to paragraph (1), (2), or (3) of this subsection shall be given fourth priority;

(5) Closure of any regulated tank required to be upgraded pursuant to P.L.1986, c. 102 (C.58:10A-21 et seq.), but not pursuant to 42 U.S.C. s 6991 et seq., shall be given last priority.

c. Notwithstanding the priority for the award of financial assistance set forth in subsection b. of this section, whenever there has been a discharge, and the discharge poses an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area, an approved application for the award of financial assistance for the remediation and upgrade or closure, if necessary, shall be given priority over all other applications for

financial assistance.

d. The priority ranking of applicants within any priority category enumerated in paragraphs (1), (2), (3), (4), and (5) of subsection b. and in subsection c. of this section shall be based upon the date an application for financial assistance is filed with the authority as determined pursuant to section 6 of P.L.1997, c.235 (C.58:10A-37.6).

e. Whenever a facility consists of petroleum underground storage tanks from more than one priority category as enumerated in paragraphs (1) through (5) of subsection b. of this section, and subsection c. of this section, all the petroleum underground storage tanks at that facility shall be accorded the priority that would be accorded the highest priority petroleum underground storage tank at that facility.

f. Notwithstanding the priority rankings established in this section, one tenth of the amount annually appropriated to the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund shall be used to provide financial assistance to owners or operators of petroleum underground storage tanks used to store heating oil for onsite consumption in a residential building, in order to finance the eligible project costs of remediations that are necessary due to the discharge of heating oil from those petroleum underground storage tanks. The authority shall provide financial assistance pursuant to this subsection notwithstanding the owner or operator's ability to obtain commercial loans for all or part of the financing. The priority ranking of applicants for these funds shall be based upon the date an application for financial assistance is filed with the authority as determined pursuant to section 6 of P.L.1997, c.235 (C.58:10A-37.6). If the authority does not receive qualified applications for financial assistance from owners and operators of petroleum underground storage tanks used to store heating oil for onsite consumption that meet the criteria set forth in this act and in any rules or regulations issued pursuant thereto, sufficient to enable the award of financial assistance an amount equal to one tenth of the amount annually appropriated to the fund in any one year as required pursuant to this subsection, the authority may award that financial assistance in the order of priority as provided in this section. In addition to the monies dedicated pursuant to this subsection, the authority may award financial assistance to an owner or operator of a petroleum underground storage tank used to store heating for onsite consumption when the criteria enumerated in subsection c. of this section are met.

58:10A-37.5. Form of financial assistance awarded; loans, conditional hardship grants

a. The authority may award financial assistance from the fund to an eligible owner or operator in the form of a loan or a conditional hardship grant as provided in this section. An award of financial assistance, either as a loan or a grant, or a combination of both, may, upon application therefor, be for 100% of

the eligible project costs. However, a loan that any applicant may receive from the fund for an upgrade, remediation, or closure, or any combination thereof, for any one facility, may not exceed \$1,000,000 and a grant that any applicant may receive from the fund for any one facility, may not exceed \$250,000. The total amount of financial assistance awarded as grants in any one year may not exceed 10% of the total amount of financial assistance awarded in that year.

b. A public entity applying for financial assistance from the fund may only be awarded financial assistance in the form of an interest free loan.

c. An applicant, other than a public entity, may apply for and receive a conditional hardship grant as provided in paragraph (1) of this subsection, or a loan for an upgrade, closure, or remediation as provided in paragraph (2) of this subsection. Financial assistance awarded an applicant pursuant to this subsection may consist entirely of a conditional hardship grant, a loan for an upgrade, or loan for a closure, or a loan for a remediation, or any combination thereof, except that the total amount of the award of financial assistance shall be subject to the per facility dollar limitation enumerated in subsection a. of this section. Notwithstanding any other provision of this subsection to the contrary, no tax exempt, nonprofit organization, corporation, or association shall be awarded a conditional hardship grant pursuant to paragraph (1) of this subsection.

(1) A conditional hardship grant for eligible project costs of an upgrade, closure or remediation shall be awarded by the authority based upon a finding of eligibility and financial hardship and upon a finding that the applicant meets the criteria set forth in this act.

In order to be eligible for a conditional hardship grant, the applicant shall have owned or operated the subject petroleum underground storage tank as of December 1, 1996 and continually thereafter or shall have inherited the property from a person who owned the petroleum underground storage tank as of that date. No applicant shall be eligible for a conditional hardship grant if the applicant has a taxable income of more than \$100,000 or a net worth, exclusive of the applicant's primary residence, of over \$100,000.

A finding of financial hardship by the authority shall be based upon a determination that an applicant cannot reasonably be expected to repay all or a portion of the eligible project costs if the financial assistance were to be awarded as a loan. The amount of an award of a conditional hardship grant shall be the amount of that portion of the eligible project costs the authority determines the applicant cannot reasonably be expected to repay.

In making a finding of financial hardship for an application for the upgrade, closure, or remediation of a petroleum underground storage tank, where the petroleum underground storage tank is a part of the business property of the owner, the authority shall base its finding upon the cash flow of the applicant's business, whether or not any part of the applicant's business is related to the

ownership or operation of that petroleum underground storage tank. In making a finding of financial hardship for an application for the upgrade or remediation of a petroleum underground storage tank, where the petroleum underground storage tank is not a part of the business property of the owner, the authority shall base its finding upon the applicant's taxable income in the year prior to the date of the application being submitted.

If the authority awards a conditional hardship grant in combination with a loan pursuant to this subsection, the authority shall release to the applicant the loan monies prior to the release of the conditional hardship grant monies.

Conditional hardship grants awarded to an applicant shall be subject to the lien provisions enumerated in section 16 of P.L.1997, c.235 (C.58:10A-37.16).

(2) A loan to an eligible owner or operator for the eligible project costs of an upgrade, closure, or remediation shall be awarded by the authority only upon a finding that the applicant other than a public entity is able to repay the amount of the loan.

In making a finding of an applicant's ability to repay a loan for the upgrade, closure, and remediation of a regulated tank, or for the remediation of a discharge from a petroleum underground storage tank, the authority shall base its finding, as applicable, upon the cash flow of the applicant's business, the applicant's taxable income and the applicant's personal and business assets, except that the authority may not consider the applicant's primary residence as collateral, except that the authority may consider the applicant's primary residence as collateral with the permission of the applicant or where the subject petroleum underground storage tank or regulated tank is located at the primary residence.

d. The authority shall, where applicable, require an applicant applying for financial assistance from the fund to submit to the authority the financial statements of the applicant's business for three years prior to the date of the application, the most recent interim financial statement for the year of the application, the applicant's federal income tax returns, or other relevant documentation.

e. Nothing in this section is intended to alter the priority or criteria for awarding financial assistance established pursuant to section 4 of P.L.1997, c.235 (C.58:10A-37.4).

f. An eligible owner or operator may only be awarded that amount of financial assistance issued as a loan for which the applicant demonstrates he could not qualify for and obtain as a commercial loan. The provisions of this subsection shall not apply to an owner or operator or petroleum underground storage tank used to store heating oil for onsite consumption in a residential building.

58:10A-37.6. Applications; form, filing requirements, fees; submission of executed contracts

An eligible owner or operator seeking financial assistance from the fund shall file an application on a form to be developed by the authority. The application form shall be submitted with the application fee. The application fee per facility for residential petroleum underground storage tanks shall be \$250. The authority may establish the application fee per facility for nonresidential petroleum underground storage tanks.

The authority shall adopt rules and regulations listing the filing requirements for a complete application for financial assistance. If a financial assistance application is determined to be incomplete by the authority, an applicant shall have 30 days from the date of receipt of written notification of incompleteness to file such additional information as may be required by the authority for a completed application. If an applicant fails to file the additional information within the 30 days, the filing date for that application shall be the date that such additional information is received by the authority. If the additional information is filed within the 30 days and is satisfactory to the authority, the filing date for that application shall be the initial date of application with the authority. Notwithstanding the above, if a completed application has been submitted and the applicant fails to submit the filing fee, then the filing date for the application shall not be established until the date on which the authority receives the application fee.

An applicant shall have 120 days from receipt of notice of approval of a financial assistance award to submit to the authority an executed contract for the upgrade, closure, or remediation, or all three, as the case may be, that is consistent with the terms and conditions of the financial assistance approval. Failure to submit an executed contract within the allotted time, without good cause, may result in an alteration of an applicant's priority ranking.

58:10A-37.7. Conditions for award of financial assistance; reasons for denial of assistance

a. The authority shall award financial assistance to an owner or operator of a facility only if the facility is properly registered with the department pursuant to section 3 of P.L.1986, c. 102 (C.58:10A-23), where applicable, and if all fees or penalties due and payable on the facility to the department pursuant to P.L.1986, c. 102 have either been paid or the nature or the amount of the fee or penalty is being contested in accordance with law.

b. The authority may deny an application for financial assistance, and any award of financial assistance may be recoverable by the authority, upon a finding that:

(1) in the case of financial assistance awarded for a remediation, the discharge was proximately caused by the applicant's knowing conduct;

(2) in the case of financial assistance awarded for a remediation, the discharge was proximately caused or exacerbated by knowing conduct by the applicant with regard to any lawful requirement applicable to petroleum underground storage tanks intended to prevent, or to facilitate the early detection of, the discharge;

(3) the applicant failed to commence or complete a remediation, closure, or an upgrade for which an award of financial assistance was made within the time required by the department in accordance with the applicable rules and regulations, within the time prescribed in an administrative order, an administrative consent agreement, a memorandum of agreement, or a court order; or

(4) the applicant provided false information or withheld information on a loan or grant application, or other relevant information required to be submitted to the authority, on any matter that would otherwise render the applicant ineligible for financial assistance from the fund, that would alter the priority of the applicant to receive financial assistance from the fund, that resulted in the applicant receiving a larger grant or loan award than the applicant would otherwise be eligible, or that resulted in payments from the fund in excess of the actual eligible project costs incurred by the applicant or the amount to which the applicant is legally eligible.

Nothing in this subsection shall be construed to require the authority to undertake an investigation or make any findings concerning the conduct described in this subsection.

c. An application for financial assistance from the fund for an upgrade or closure of a regulated tank shall include all regulated tanks at the facility for which the applicant is seeking financial assistance. Once financial assistance for an upgrade, closure or a remediation is awarded for a facility, no additional award of financial assistance may be made for that facility. However, if an applicant discovers while performing upgrade or closure activities that a remediation is necessary at the site of a facility, and if financial assistance was previously awarded for that site only for an upgrade or closure of a regulated tank, the applicant may amend his application and apply for financial assistance for the required remediation subject to the limitations enumerated in section 5 of this act. An application for financial assistance for an upgrade or closure of a regulated tank shall be conditioned upon the applicant agreeing to perform, at the time of the upgrade or closure, any remediation necessary as a result of a discharge from the regulated tank and commencement of the remediation within the time prescribed and in accordance with the rules and regulations of the department.

d. Except as provided below, no financial assistance for upgrade or closure

shall be awarded for any regulated tank required to meet the upgrade or closure requirements pursuant to 42 U.S.C. s.6991 et seq. or P.L.1986, c. 102 (C.58:10A-21 et seq.), or for the remediation of a discharge from any such regulated tank except as provided in subsection c. of this section, unless the application is filed with the authority prior to January 1, 1999 and the application is complete and the application fee is received by March 1, 1999. No financial assistance for upgrade or closure shall be awarded for any underground storage tank with a capacity of over 2,000 gallons used to store heating oil for onsite consumption in a nonresidential building required to be upgraded pursuant to P.L.1986, c. 102 (C.58:10A-21 et seq.) but not pursuant to 42 U.S.C. s.6991 et seq. or for the remediation of a discharge from any such regulated tank except as provided in subsection c. of this section, unless the application is filed with the authority prior to August 31, 1999 and the application is complete and the application fee is received by October 31, 1999.

e. The date of occurrence of a discharge shall not affect eligibility for financial assistance from the fund. Except for a preliminary assessment or a site investigation performed after the effective date of P.L.1997, c. 235 (C.58:10A-37.1 et seq.), and except as provided in subsection g. of this section, no award of financial assistance shall be made from the fund for the otherwise eligible project costs of a remediation, closure, or an upgrade, or parts thereof, completed prior to an award of financial assistance from the fund.

f. No financial assistance may be awarded from the fund for the remediation of a discharge from a petroleum underground storage tank if financial assistance from the Hazardous Discharge Site Remediation Fund established pursuant to section 26 of P.L.1993, c. 139 (C.58:10B-4) has previously been made for a remediation at that site as a result of a discharge from that petroleum underground storage tank. No financial assistance may be awarded from the fund for the remediation of a discharge from a petroleum underground storage tank if the discharge began subsequent to the completion of an upgrade of that petroleum underground storage tank, which upgrade was intended to meet all applicable upgrade regulations of the department, no matter when the upgrade was performed.

g. Notwithstanding any provision of P.L.1997, c. 235 (C.58:10A-37.1 et seq.), where an eligible owner or operator has filed an application for financial assistance from the fund, and there are either insufficient monies in the fund or the authority has not yet acted upon the application or awarded the financial assistance, the eligible owner or operator may expend its own funds for the upgrade, closure, or remediation, and upon approval of the application, the authority shall award the financial assistance as a reimbursement of the monies expended for eligible project costs.

58:10A-37.8. Adoption of rules and regulations pertaining to underground storage tank financing

a. The authority shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), rules and regulations to:

(1) require an applicant:

(a) to submit documentation or other information on the nature and scope of the work to be performed, cost estimates thereon, and, as available, proofs of the actual costs of all work performed;

(b) to demonstrate, where applicable, an ability to repay the amount of any loan and to provide adequate collateral to secure the amount of a loan;

(c) to submit a certification that the applicant has not engaged in any of the conduct described in subsection b. of section 7 of P.L.1997, c.235 (C.58:10A-37.7);

(d) to submit a certification that any upgrade, closure, and remediation being undertaken will be or was completed or was in conformance with rules and regulations of the department;

(e) require the loan or grant recipient to provide access at reasonable times to the subject property to determine compliance with the terms and conditions of the loan or grant; and

(f) to submit documentation and a certification, as applicable, that the applicant was unable to qualify for and obtain a commercial loan for all or part of the eligible project costs;

(2) require any financial assistance awarded to be used only for the purposes for which the award is made and that the applicant is adhering to all of the terms and conditions of the loan agreement; and

(3) adopt such other requirements as may be deemed necessary to carry out its responsibilities pursuant to this act.

b. Information submitted as part of an application that results in the award of a grant from the fund shall be a public record subject to the provisions of P.L.1963, c. 73 (C.47:1A-1 et seq.). Information submitted as part of an application that results solely in the award of a loan from the fund shall not be a public record subject to the provisions of P.L.1963, c. 73 (C.47:1A-1 et seq.).

c. The authority may file a lien on real property owned by the applicant in addition to the property at which the subject facility is located to secure a loan, except that such a filing shall be subject to the restrictions on the use of the applicant's primary residence as collateral, as provided in section 5 of P.L.1997, c.235 (C.58:10A-37.5) and paragraph (3) of subsection d. of this section. Liens filed pursuant to this subsection shall not affect any valid lien, right or interest in the real property filed in accordance with established procedure prior to the filing

of this notice of lien.

d. In establishing requirements for applications for financial assistance, the authority:

(1) may not impose conditions that interfere with the everyday normal operations of a financial assistance recipient's business activities, except to the extent necessary to ensure the recipient's ability to repay the loan and to preserve the value of any loan collateral;

(2) shall strive to minimize the complexity and costs to applicants or recipients of compliance with such requirements;

(3) may not require as collateral for any loan, except with the applicant's consent, the primary residence of the applicant, except that this paragraph shall not apply to a loan issued from the fund for the eligible project costs for a petroleum underground storage tank at the site of the primary residence; and

(4) shall expeditiously process all applications in accordance with a schedule established by the authority for the review thereof and the taking of final action, which schedule shall reflect the complexity of an application.

58:10A-37.9. Enforcement actions; pending applications

a. The department and the Office of the Attorney General may not take any enforcement action pursuant to section 12 of P.L.1986, c. 102 (C.58:10A-32) against the owner or operator of a regulated tank for failure to upgrade or close a regulated tank or for failure to maintain evidence of financial responsibility pursuant to section 5 of P.L.1986, c. 102 (C.58:10A-25), if the owner or operator, (1) has submitted an application for financial assistance from the fund prior to the date upon which the upgrade or closure is required by law to be completed, (2) the authority has not yet acted on the application as of that date, (3) the owner or operator agrees to enter into a consent agreement or a memorandum of agreement with the department to comply with the upgrade, closure, remediation, and financial responsibility requirements, (4) the owner or operator complies with the provisions of the consent agreement or the memorandum of agreement, and (5) the owner or operator maintains an acceptable method of release detection for the regulated tanks that are the subject of the application for financial assistance as required pursuant to section 5 of P.L.1986, c. 102 (C.58:10-25).

b. The provisions of subsection a. of this section shall not apply upon the denial of an application for financial assistance or in the case of a knowing discharge that may result in a serious threat to the public health or the environment. The department shall make an annual report to the Senate Environment Committee and the Assembly Agriculture and Waste Management Committee or their successors listing any enforcement actions taken against an

owner or operator of a regulated tank who meets the requirements of subsection a. of this section. The report shall list the name of the violator, the specific statute or regulation alleged to have been violated, the status of the case at the time of the report, and the penalty imposed.

58:10A-37.10. Terms of loan; sale of facility

a. All loans awarded from the fund shall be for a term not to exceed ten years. Except as provided in subsection b. of section 5 of P.L.1997, c.235 (C.58:10A-37.5), all loans shall be at a rate between two percent and the Prime Rate at the time of approval, or at the time of loan closing if the prime rate is lower at that time. The authority shall determine the interest rate to be imposed based on the applicant's ability to repay the loan.

b. Upon the sale of the facility for which the loan was made, the unpaid balance of the loan shall become immediately payable in full. Upon the sale of a facility for which a conditional hardship grant was made pursuant to section 5 of P.L.1997, c.235 (C.58:10A-37.5), that amount of the conditional hardship grant that must be repaid, as calculated pursuant to section 16 of P.L.1997, c.235 (C.58:10A-37.16), shall become immediately payable in full.

58:10A-37.11. Property covered by environmental liability insurance

Notwithstanding any other provision of P.L.1997, c.235 (C.58:10A-37.1 et seq.), if an owner or operator maintains environmental liability or other insurance coverage for the remediation of a discharge, the insurance coverage shall be the primary coverage for the costs of a remediation. Eligible owners and operators may apply for financial assistance from the fund for any excess thereof, including any deductible, up to the per facility monetary limits set forth in section 5 of P.L.1997, c.235 (C.58:10A-37.5). An eligible owner or operator shall file a notice of a claim with its insurance carrier prior to filing an application for financial assistance from the fund. The notice of claim shall list the fund as a beneficiary of the claim to the extent of an award of financial assistance is made from the fund. As a condition of receiving an award of financial assistance from the fund, the eligible owner or operator shall agree to diligently pursue the claim against its insurance carrier.

58:10A-37.12. Memoranda of agreement; exercise of authority powers or responsibilities

The authority and the department may enter into a memorandum of agreement whereby any of the powers or responsibilities that the authority may exercise pursuant to P.L.1997, c.235 (C.58:10A-37.1 et seq.), may be exercised by the department. The authority may require an applicant for financial assistance to enter into an agreement with the department prior to an application

being deemed complete, which agreement shall provide that any upgrade, closure, or remediation will be performed pursuant to rules and regulations of the department. Any agreement, review of documents, or other powers to be exercised by the department pursuant to this section must be completed by the department within 45 days of the application being submitted to the department.

Pursuant to the memorandum of agreement, the authority and the department may provide that any of the monies in the fund that may be used for administrative expenses by the authority pursuant to section 3 of P.L.1997, c.235 (C.58:10A-37.3), may be used by the department in carrying out its responsibilities under this section.

58:10A-37.13. Joint application, review and approval procedures

The authority shall establish a joint application filing, review and approval procedure whereby a person who is eligible for financial assistance from the fund, created pursuant to section 3 of P.L.1997, c.235 (C.58:10A-37.3) and who is eligible for financial assistance from the Hazardous Discharge Site Remediation Fund, created pursuant to section 26 of P.L.1993, c. 139 (C.58:10B-4), may file one application for financial assistance from both funds and receive a joint response from the authority that approves or disapproves the application in whole or in part.

58:10A-37.14. Payment of grant or loan; subrogation to rights of owner or operator

a. Payment of any grant from the fund, or of a loan from the fund where the loan is in default and is uncollectible, for any costs relating to a remediation, shall be conditioned upon the authority being subrogated to all of the rights of an owner or operator against any insurance carrier, against any previous owner or operator of the facility where the previous owner or operator engaged in any conduct identified in paragraph (1) or (2) of subsection b. of section 7 of P.L.1997, c.235 (C.58:10A-37.7), and against any other person liable for the discharge pursuant to subsection c. of section 8 of P.L.1976, c. 141 (C.58:10-23.11g), for the costs of the remediation necessitated by the discharge.

In an action by the authority to enforce a right of subrogation, the authority shall be entitled to invoke all the rights and defenses available to the grant or loan recipient if the action had been brought by the grant or loan recipient against such other person. Nothing in this subsection shall be construed to affect or limit any right that an owner or operator of a petroleum underground storage tank may have under statutory or common law against any other person concerning a discharge of petroleum from that tank.

b. The authority may seek to recover any financial assistance or that part of an award of financial assistance that exceeds the eligible project costs or that was obtained as a result of conduct described in paragraph (4) of subsection b. of section 7 of P.L.1997, c.235 (C.58:10A-37.7). If the authority is the prevailing

party in an action to recover financial assistance payments made from the fund, the authority shall be entitled to all investigative and legal costs incurred by the authority in bringing and prosecuting the action, as well as interest charges which shall accrue as of the date such payments were made from the fund, unless the court makes a finding of a lack of intent to defraud the fund. The rate of interest shall be the interest rate for judgments established pursuant to the Rules Governing the Courts of the State of New Jersey.

58:10A-37.15. False or withheld documents or information; civil actions; penalties

a. A person who purposely, knowingly, recklessly, or negligently provides false documents or false information to the authority or to the department, or withholds documents or information, in relation to an application for financial assistance from the fund or in relation to documents or information that may be required as a condition of receiving an award of financial assistance from the fund, shall be subject to a civil penalty not to exceed \$50,000. Any penalty incurred under this subsection may be recovered with costs in a summary proceeding pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq. in the Superior Court.

b. (1) The authority may commence a civil action in Superior Court to recover any financial assistance awarded to an applicant from the fund if financial assistance was obtained, in whole or in part, as the result of providing false documents or false information to the authority or to the department or by withholding documents or information from the authority or the department. The action to recover money awarded by the authority may be combined with any action to impose penalties provided for in subsection a. of this section.

(2) The authority may commence a civil action in Superior Court to recover any financial assistance awarded as a loan where the recipient of the loan has not made loan repayments in accordance with the loan agreement, where any condition or provision of the loan agreement has been violated by the loan recipient, or to enforce any lien filed pursuant to the issuance of financial assistance.

c. (1) A person who purposely or knowingly provides false documents or false information to the authority or to the department, or withholds documents or information, in relation to an application for financial assistance from the fund or in relation to documents or information that may be required as a condition of receiving an award of financial assistance from the fund, with the intent to alter the applicant's eligibility for financial assistance from the fund, alter the priority of the applicant's application to receive financial assistance from the fund, cause the applicant to receive a larger grant award than the applicant would otherwise be eligible for, or obtain financial assistance from the fund in excess of the eligible project costs, shall be guilty of a crime of the third degree.

(2) A person who recklessly provides false documents or false information to the authority or to the department, or withholds documents or information, in relation to an application for financial assistance from the fund or in relation to documents or information that may be required as a condition of receiving an award of financial assistance from the fund, which results in the alteration of the applicant's eligibility for financial assistance from the fund, the alteration of the priority of the applicant's application to receive financial assistance from the fund, which causes the applicant to receive a larger grant award than the applicant would otherwise be eligible for, or obtain financial assistance from the fund in excess of the eligible project costs, shall be guilty of a crime of the fourth degree.

58:10A-37.16. Liens

a. In addition to any other financial assistance requirements imposed by the authority pursuant to P.L.1997, c.235 (C.58:10A-37.1 et seq.), any award of financial assistance from the fund shall constitute, in each instance, a debt of the applicant to the fund. The debt shall constitute a lien on the real property at which the subject facility is located. The lien shall be in the amount of the financial assistance awarded the applicant. The lien shall attach when a notice of lien, incorporating the name of the property owner, a description of the real property on which the subject facility is located and an identification of the amount of the financial assistance awarded, is duly filed with the county recording officer in the county in which the property is located.

Where financial assistance from the fund is awarded as a combination of a loan and a grant, separate liens for the loan and the grant shall be filed. No lien shall be placed on any real property of an applicant based on a conditional hardship grant awarded pursuant to paragraph (1) of subsection c. of section 5 of P.L.1997, c.235 (C.58:10A-37.5), for a remediation necessitated by a discharge from a petroleum underground storage tank used to store heating oil at the applicant's primary residence.

b. A lien that is filed on real property pursuant to a loan shall be removed upon repayment of the loan.

c. The lien that is filed on real property pursuant to a conditional hardship grant shall be removed upon repayment of the amount of the grant that is unsatisfied or upon the end of a 15 year period in which the site for which the financial assistance was awarded continued to be operated in substantially the same manner as it was operated at the time of the award of financial assistance. The period of operation need not run consecutively. Beginning with the 11th year of operating in substantially the same manner, 20% of the conditional hardship grant shall be deemed satisfied with an additional 20% to be satisfied each year until the entire amount of the conditional hardship grant is satisfied at the end of the 15 year period. The owner or operator of the facility claiming to have satisfied a conditional hardship grant due to the 15 year period of

operation, shall submit a certification of this fact to the authority. Upon repayment of the unsatisfied grant award or upon submittal of this certification, unless the authority has made a finding that the certification is not correct, the authority shall remove the lien from the property.

Where real property for which a conditional hardship grant was awarded is not being operated in substantially the same manner, the 15 year period to satisfy the lien shall be tolled. If at any time prior to the satisfaction of the lien the property is developed or operated for a purpose that is not substantially the same as its operation at the time of the award of the conditional hardship grant, the grant recipient shall so certify to the authority upon the change in operation. Upon receipt of this certification, the authority shall determine, based upon the new operation of the property if the financial assistance shall continue as a conditional hardship grant or if it shall be converted into a loan. In making this determination, the authority shall base its decision on the financial hardship factors used in determining the original eligibility for the conditional hardship grant.

The authority may take whatever enforcement actions it deems necessary to verify the operation of any property for which a conditional hardship grant was made. The terms and conditions of any loan converted from a grant pursuant to this subsection shall be the same as those authorized pursuant to this act.

d. The provisions of this section do not apply to any real property of an applicant who is a public entity.

58:10A-37.17. Adoption of rules and regulations; administration of Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund

a. Within 180 days of the effective date of this act, the New Jersey Economic Development Authority shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), rules and regulations for the administration of the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund and the issuance of financial assistance therefrom as necessary to implement this act.

b. Within 180 days of the effective date of this act, the Department of Environmental Protection shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), rules and regulations for the administration of the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund and the issuance of financial assistance therefrom as necessary to implement this act.

c. Prior to the adoption of rules and regulations pursuant to this section, the authority and the department may, notwithstanding the provisions of the "Administrative Procedure Act," adopt procedures for the acceptance and review

of financial assistance applications from the fund. No financial assistance may be awarded however, until the rules and regulations are adopted pursuant to this section.

58:10A-37.18. Annual surcharge; evidence of financial responsibility

There is imposed upon the owner or operator of a facility who is required to maintain evidence of financial responsibility pursuant to section 5 of P.L.1986, c. 102 (C.58:10A-25) or pursuant to 42 U.S.C. s 6991 et seq., and any regulations adopted pursuant thereto, and who does not maintain that evidence of financial responsibility, an annual surcharge. The annual surcharge shall be \$1,500 for facilities with one or two petroleum underground storage tanks, \$3,500 for facilities with three to six petroleum underground storage tanks, and \$6,000 for facilities with seven or more petroleum underground storage tanks. The owner or operator shall pay this surcharge to the authority for deposit into the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund. The New Jersey Spill Compensation Fund shall not be considered as evidence of financial responsibility for the purposes of this section.

Nothing in this section shall be construed to negate the requirement of an owner or operator of a facility to maintain evidence of financial responsibility as may be required pursuant to section 5 of P.L.1986, c. 102 (C.58:10A-25) or pursuant to 42 U.S.C. s 6991 et seq.

The New Jersey Economic Development Authority, in consultation with the Department of Environmental Protection shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), rules and regulations imposing the surcharge.

58:10A-37.19. Joint annual report to Legislature

a. The New Jersey Economic Development Authority and the Department of Environmental Protection shall present a joint annual report to the presiding officers of the two houses of the Legislature and to the chairmen and members of the Assembly Agriculture and Waste Management Committee and the Senate Environment Committee, or their successors, on the status of the financial assistance program, which shall include: a statement on receipts and expenditures for the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund; the number of applications for financial assistance received and the actions taken on the applications; the amount of financial assistance awarded as loans or as grants for both public entities and other applicants; the identity and location of the facilities receiving the financial assistance; an assessment of the adequacy of current funding levels in meeting the statutory objectives of the fund; an accounting of expenses incurred by the authority in administering the fund; and such other information, including any legislative or administrative recommendations for program changes, as the

authority and the department may deem appropriate or useful. The annual reports shall be made not later than March 31 of each year beginning one year following the effective date of this act. The first report shall also contain a needs survey, which shall estimate the scope and projected costs of all potentially eligible remediation applications for financial assistance from the fund.

58:10A-37.20. Liability of State

Nothing in P.L.1997, c.235 (C.58:10A-37.1 et seq.) shall be construed to:

(1) impose any liability on the State or the authority for any claims made to, or approved from, the Petroleum Underground Storage Tank Remediation, and Closure Upgrade Fund, and the extent of the State's or authority's responsibility for the payment or reimbursement of an approved application shall be limited to the amount of otherwise unobligated monies available in the fund;

(2) impose any liability on the State or the authority for the quality of any work performed pursuant to a remediation, closure or an upgrade for which financial assistance is made; or

(3) alter any obligation of an owner or operator of a facility, who is eligible for financial assistance from the fund, to comply in a timely manner with all lawful requirements relating to the facility.

58:10A-37.21. Appropriation to fund

There is appropriated from the special account in the General Fund created pursuant to Article VIII, Section II, paragraph 6 of the New Jersey Constitution \$9,900,000 to the New Jersey Economic Development Authority which shall be deposited into the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund, established pursuant to section 3 of P.L.1997, c.235 (C.58:10A-37.3), for use for any of the purposes for which that fund has been established. Expenditures of monies in the fund shall be subject to the conditions set forth in Article VIII, Section II, paragraph 6 of the New Jersey Constitution and the provisions in P.L.1997, c.235 (C.58:10A-37.1 et seq.).

58:10A-37.22. Registration of underground storage tanks; grace period

Any person who has owned or operated an underground storage tank as defined pursuant to section 2 of P.L.1986, c. 102 (C.58:10A-22) who has not registered that tank pursuant to the provisions of P.L.1986, c. 102 (C.58:10A-21 et seq.), shall not be subject to a civil penalty for the failure to register that underground storage tank if the person, within one year of the effective date of this act, registers the tank pursuant to P.L.1986, c. 102. The department may require that person to pay any registration fees that would have been paid had

the underground storage tank been registered in accordance with law.

58:10A-37.23. Upgrade or remediation complete; evidence of financial responsibility for corrective action submission

Prior to July 1, 1997, or within six months of an underground storage tank being upgraded and the site remediated as required pursuant to P.L.1986, c. 102 (C.58:10A-21 et seq.), whichever is later, the owner or operator of that underground storage tank shall submit to the department evidence of financial responsibility for taking corrective action and compensating third parties as is required pursuant to section 5 of P.L. 1986, c. 102 (C.58:10A-25) or pursuant to 42 U.S.C. s 6991 et seq. After a regulated tank is upgraded, the New Jersey Spill Compensation Fund, created pursuant to the "Spill Compensation and Control Act," P.L.1976, c. 141 (C.58:10-23.11 et seq.) shall no longer serve as the evidence of financial responsibility for the regulated tank.

58:10A-38. Legislative findings and determinations

The Legislature finds that contaminated sludges are often ocean dumped; that land-based disposal methods for sludge are environmentally preferable to the current practice of ocean dumping; that land-based disposal of sludge requires the removal of contaminants from the waste stream; that by requiring land-based sludge management criteria for sludges which are currently ocean dumped, the sewage treatment plants will have the option to cease ocean dumping in favor of a land-based disposal method; and that even if ocean dumping of sludge continues, it is prudent to minimize the presence of contaminants in the sludge.

The Legislature further finds that the State should work toward developing alternatives to ocean disposal of sludge in the event that the practice is prohibited, and that the land-based sludge management criteria already established for sludge should be used to develop the standards for limiting the levels of contaminants discharged by industrial establishments into the sewerage systems, which limits should be incorporated in the discharge permits issued to facilities.

The Legislature therefore determines that all sludge generated in the State from the operation of municipal treatment works should meet the quality standards established by the Department of Environmental Protection for the land-based sludge management of sludge and that the attainment of these standards should be reflected in the permits issued for pretreatment discharges.

58:10A-39. Definitions

As used in this act:

"Land-based sludge management criteria" means those standards established by the department in the Statewide Sludge Management Plan adopted pursuant to the "Solid Waste Management Act," P.L.1970, c. 39 (C. 13:1E-1 et seq.), or established pursuant to the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. s 1251 et seq.), or any regulations adopted pursuant thereto.

"Pretreatment permit" means a permit issued by either the department or by a municipal treatment works or by both for the discharge of industrial wastewater into a sewerage system;

"Sludge" means the solid residue and associated liquid resulting from physical, chemical, or biological treatment of domestic or industrial wastewaters;

"Wastewater" means residential, commercial, industrial, or agricultural liquid waste, sewage, stormwater runoff, or any combination thereof, or other residue discharged to or collected by a sewerage system.

58:10A-40. Pretreatment permits; limits on discharge of pollutants based on attainment of land-based sludge management criteria

All pretreatment permits shall include limits on the discharge of pollutants, which limits shall be based on the attainment of land-based sludge management criteria for sludge from the municipal treatment works. Sludge that meets the land-based sludge management criteria shall be of sufficient quality to be disposed of in a land-based manner without degrading the environment or posing a threat to human health.

58:10A-41. Sludge generated by municipal treatment works; conformance with land-based sludge management criteria

On or after March 17, 1991, all sludge generated in this State by municipal treatment works shall conform to the land-based sludge management criteria.

58:10A-42. Plan for land-based management of sludges disposed of in ocean; development, certification and submission to Governor and legislature

Each municipal treatment works shall prepare a plan for the land-based management of sludges currently disposed of in the ocean. The plan shall provide for the termination of ocean disposal by March 17, 1991 and shall include, but need not be limited to, an analysis of the pretreatment, air pollution control, residuals management, funding requirements and potential sources

thereof necessary for the implementation of the land-based management methods chosen by the municipal treatment works. Not later than April 30, 1989, each municipal treatment works shall develop a plan to implement land-based sludge management methods and shall so certify to the Department of Environmental Protection. Not later than June 30, 1989, the department shall submit the several plans to the Governor and the Legislature, together with its comments thereon and any recommendations for legislative or administrative action deemed appropriate.

58:10A-43. Compliance schedules

The Department of Environmental Protection shall establish compliance schedules for municipal treatment works. The compliance schedules shall include deadlines for submittal of the permit application or applications for the chosen land-based sludge management method or methods, awarding of the construction contract, commencement of construction, and completion of construction. The department shall act either to approve, conditionally approve or deny permit applications within 6 months of their submittal.

58:10A-44. Short title

This act shall be known and may be cited as the "Ocean Sludge Dumping Elimination Act."

58:10A-45. Legislative findings

The Legislature finds that 2.8 million wet tons (1 million dry pounds) of sewage sludge generated by six New Jersey municipal treatment works each day are ocean disposed at the federally designated 106-mile dump site; that these sludges are ocean rather than land disposed in recognition of the threat posed by the presence of contaminants; that the United States Environmental Protection Agency has officially affirmed a termination of ocean dumping as its adopted policy, a goal undermined by continuing at-sea disposal of sewage sludge; and that experts in deepwater ocean ecosystems have attested to the deleterious effects of waste disposal on the ocean environment.

58:10A-46. Municipal treatment works; prohibition from disposal of sludge in ocean waters

The provisions of any other law, rule or regulation to the contrary notwithstanding, municipal treatment works are prohibited from disposing of sludge in ocean waters by March 17, 1991.

58:10A-47. Short title

This act shall be known and may be cited as the "Ocean Dumping Enforcement Act."

58:10A-48. Definitions

As used in this act:

"Dump" or "dumping" means the disposition of material. Dumping does not mean: (1) the disposition of any effluent from any outfall structure to the extent that the disposition is regulated under the provisions of the State "Water Pollution Control Act," P.L. 1977, c. 74 (C. 58:10A-1 et seq.); (2) a routine discharge of effluent incidental to the propulsion of, or operation of motor-driven equipment on, vessels; (3) the construction of any fixed structure or artificial island nor the intentional placement of any device in ocean waters, or on or in the submerged land beneath those waters, for a purpose other than disposal, when the construction or placement is otherwise regulated by federal or State law or occurs pursuant to an authorized federal or State program; (4) the deposit of fish, shellfish, and other animals and plants, or their body parts, for the purpose of developing, maintaining, or harvesting fishery, plant, or shellfish resources and is otherwise regulated by federal or State law or occurs pursuant to an authorized federal or State program; (5) the discharge of sewage as defined pursuant to 33 U.S.C. s 1322; or (6) any dumping activity permitted and not violative of the provisions of the federal "Marine Protection, Research, and Sanctuaries Act of 1972," 33 U.S.C. s 1401 et seq. or other State or federal law;

"Material" means matter of any kind or description, including, but not limited to, dredged material, solid waste, incinerator residue, garbage, sewage, sewage sludge, munitions, radiological, chemical, and biological warfare agents, radioactive materials, chemicals, biological and laboratory waste, wrecked or discarded equipment, rock, sand, excavation debris, and industrial, municipal, agricultural, and other waste;

"Ocean waters" means those waters of the open seas lying seaward of the base line from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone, April 29, 1958, 15 U.S.T. 1606, T.I.A.S. No. 5639.

58:10A-49. Intentionally dumping material into or which comes into ocean waters within jurisdiction of state; penalty; reward for information leading to imposition or collection of criminal penalty

a. A person who intentionally dumps any material into the ocean waters within the jurisdiction of this State, or into the waters outside the jurisdiction of this State, which material enters the ocean waters within the jurisdiction of this

State, is guilty of a crime of the third degree.

b. Of the monetary penalty imposed pursuant to this section, 10% shall be paid to the Department of Environmental Protection from the General Fund if the Attorney General determines that a person or persons are entitled to a reward pursuant to subsection c. of this section.

c. Any person who provides information to an enforcing authority concerning a violation of this act that proximately results in the imposition and collection of a criminal penalty as the result of a criminal action brought pursuant to this act shall be entitled to a reward of 10% of the penalty collected. The reward shall be paid by the department from moneys received pursuant to subsection b. of this section. If more than one person is entitled to a reward, the Attorney General shall determine the percentage of the reward that each person shall receive. The Attorney General shall adopt, pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.), rules and regulations necessary to implement this section, including procedures to assure the anonymity of the person or persons providing the information to the enforcing authority when appropriate.

58:10A-50. Inapplicability of act to dumping to secure safety of human life or man-made structures

The provisions of this act do not apply when the dumping of any material is necessary to secure the safety of human life or of vessels, aircraft, platforms, or other man-made structures at sea in cases of force majeure caused by stress of weather, or in any case that constitutes a danger to human life or a real threat to vessels, aircraft, platforms, or other man-made structures at sea, if dumping appears to be the only way of averting the threat and if there is every probability that the damage consequent upon the dumping will be less than would otherwise occur. In such instances dumping pursuant to this section shall be so conducted as to minimize the likelihood of damage to human or marine life.

58:10A-51. Submission of proposals by Attorney General to allow enforcement of provisions of act

The Attorney General shall submit to the Administrator of the federal Environmental Protection Agency whatever proposals may be necessary pursuant to 33 U.S.C. s 1416 in order to allow enforcement of the provisions of this act.

58:10A-52. Short title

This act shall be known, and may be cited, as the "Clean Ocean Education Act."

58:10A-53. Legislative findings and declarations

The Legislature finds and declares that the presence of plastic and other non-biodegradable materials in coastal waters has an adverse effect on the quality of ocean waters, on sea mammals and other marine life, and potentially on human health; that behavior which results in ocean and beach discharges of such materials is the product, at least in part, of a lack of information and awareness on the part of the general public of the consequences of their acts; and that a public education program can play a key role in supplementing State, federal, and international efforts to reduce ocean pollution and promote a healthy marine environment.

58:10A-54. Educational materials on deleterious effects of plastics and other forms of pollution on marine environment; preparation and distribution

The Department of Environmental Protection, in consultation with the Department of Education and citizen, educational and environmental groups, shall prepare educational materials concerning the deleterious effects of plastics and other forms of pollution on the marine environment. The materials shall promote the values of litter control, oil recycling, street cleaning, and "pooper scooper" activities; encourage the use of biodegradable or recyclable alternatives to plastics where adequate alternatives exist; and inform citizens of the need to develop and participate in community programs for recycling, litter control, and other similar public benefit programs. The Department of Environmental Protection shall distribute these educational materials to civic, community, and other public interest organizations.

58:10A-55. Distribution to school districts and integration in curricula

The Department of Education shall distribute the educational materials prepared by the Department of Environmental Protection pursuant to section 3 of this act to each school district in the State. Local school boards are encouraged to integrate these educational materials into the curricula where possible, and to otherwise make them available to elementary and secondary school children for extracurricular activities and to their parents.

58:10A-56. Prohibition of discharge of sewage from watercraft into coastal water area designated as "no discharge" area

No person may discharge sewage from a watercraft into any coastal water area designated as a "no discharge" area by the Administrator of the federal Environmental Protection Agency pursuant

to an application filed by the Department of Environmental Protection in accordance with 33 U.S.C. s 1322.

58:10A-57. Identification of location of and requirement for installation in public or private marinas of sewage pumpout devices

a. Within 90 days of the effective date of this act, the Department of Environmental Protection shall conduct a study of the availability and location of, and demand or need for, sewage pumpout devices for Type III marine sanitation devices, and portable toilet emptying receptacles at public or private marinas and boatyards, or at other locations in coastal estuaries and their tributaries within the State's jurisdiction. This study shall include an identification of the wastewater treatment facilities at which waste from Type III marine sanitation devices and portable toilet emptying receptacles shall be disposed of and treated.

b. Within nine months of the completion of the study conducted pursuant to subsection a. of this section, the Department shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.) rules and regulations identifying the public or private marinas at which sewage pumpout devices for Type III marine sanitation devices and portable toilet emptying receptacles shall be located, and requiring the owners or operators of those public or private marinas to install or provide the required sewage pumpout devices or portable emptying receptacles, as the case may be.

58:10A-58. Assessment study and recommendations; submission to legislative committees

Not later than May 1, 1989, the department shall submit to the Assembly Environmental Quality Committee and the Senate Energy and Environment Committee the assessment study required pursuant to section 2 of this act, along with its recommendations for any legislative and administrative action that may be necessary to assure watercraft, using the coastal and intracoastal waters of the State, reasonable access to sewage pumpout facilities and portable toilet emptying receptacles. The recommendations shall include proposals for an information program to acquaint boaters with proper sewage disposal and the location of marine sewage disposal facilities.

58:10A-59. Violations; penalty

A person who violates the provisions of section 1 of this act, or who violates the provisions of any rule and regulation adopted by the department pursuant to section 2 of this act, shall be subject to the penalty provisions of section 10 of P.L.1977, c. 74 (C. 58:10A-10).

58:10A-60. Application to Environmental Protection Agency for approval necessary to implement act

The department shall apply, within six months of the effective date of this act, to the United States Environmental Protection Agency for such approval as is necessary to implement the provisions of section 1 of this act.